

No. 10148

United States
Circuit Court of Appeals
For the Ninth Circuit.

Vol.
2307

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

J. G. BOSWELL COMPANY and CORCORAN
TELEPHONE EXCHANGE,

Respondents.

see Vols
2307-2808

Transcript of Record

In Seven Volumes

VOLUME I

FILED

Pages 1 to 497

SEP 15 1942

PAUL P. O'BRIEN,
CLERK

Upon Petition for Enforcement of An Order of the
National Labor Relations Board

No. 10148

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BOARD'S EXHIBIT 1-Q

United States of America

Before the National Labor Relations Board
20th Region

Case No. XX C619

Date filed Mar. 14, 1939

In the Matter of

CORCORAN TELEPHONE EXCHANGE

and

(Mrs.) MARGARET A. DUNN

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Mr. C. H. Glenn, pres. Corcoran Telephone Exchange; Corcoran, Calif. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On March 1, 1939, my employer, Mr. H. C. Glenn, president of the Corcoran Telephone Exchange asked me to resign my position as chief operator—held for fifteen years—because I had been accused of giving information to a labor organizer and to pickets at the J. G. Boswell Cotton Gin in Corcoran. Mr. Glenn Claimed that “pressure was brought to bear” upon him by employees of the Boswell Com-

pany and a group of farmers. This I refused to do and the next day I was discharged. Mr. Glenn refused to talk to me about the matter. My daughters do not belong to a labor organization nor are they engaged in any union activities (although Mr. Glenn claimed that they were giving the information to the pickets) but the accusations came because my daughters were seen talking to Mr. Prior, a labor organizer; they, however, were receiving a personal message through Mr. Prior, from Drexel Sprecker, a N.L.R.B. attorney, who one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

MARGARET A. DUNN

Box 963

Corcoran, Calif.

Subscribed and sworn to before me this 13 day of March, 1939 at Corcoran.

[Seal] FRED GALUSHA

My Commission Expires Oct. 4, 1942.

BOARD'S EXHIBIT 1-R

United States of America

Before the National Labor Relations Board

21st Region

Case No. XXI C1025

Date filed 5/4/1939

89 inv.

In the Matter of

J. G. BOSWELL COMPANY, a corporation,
ASSOCIATED FARMERS OF KINGS
COUNTY, INC., a corporation, and COR-
CORAN TELEPHONE EXCHANGE, a cor-
poration.

and

COTTON PRODUCTS AND GRAIN MILL
WORKERS UNION, LOCAL NO. 21798, AFL

FOURTH AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that J. G. Boswell Company, Corcoran, California, Associated Farmers of Kings County, Inc., Hanford and Corcoran, California, and Corcoran Telephone Exchange, Corcoran, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3), & (4) of said Act, in that

(1) J. G. Boswell Company, hereinafter called the "Company", through its supervisory employees,

told certain of its employees that they would lose their jobs if they joined the Cotton Products and Grain Mill Workers' Union, Local No. 21798, A. F. L. hereinafter called the "Union"; made statements condemning the Union; said that the Company opposed the Union; said that the Company would cease certain operations if the employees joined the Union; induced employees to spy upon and report to the Company the activities of Union members and Union meetings; offered discharged Union members employment if they would withdraw from the Union; and, by these and other acts, said Company did violate Section 8 (1) of the Act. Said statements were made and said actions taken on or about July 5, 6, 15, 16, 17, September 19, 20, October 29, 31, almost every day during November, all in the year 1938, and generally during the months of July, September, October, November, and December of 1938, and January of 1939.

(2) On or about March 20, 1938, the Company discharged James W. Gilmore, and on or about July 1, 1938, refused to reinstate said James W. Gilmore because he attempted to organize the employees of the Company, and with other employees engaged in concerted activities for their mutual aid and protection, and by said acts the Company violated Section 8 (3) of the Act.

(3) On or about November 17, 1938, the Company discharged the following employees because of their Union activities, and in so doing violated Section 8 (3) of the Act:

1. W. R. Johnston
2. Stephen J. Griffin
3. Elmer Eller

(4) On or about November 15, 1938, the Company locked out Boyd Ely and Walter Winslow by shutting down the oil mill where these men were employed, and failed to rehire these men when said oil mill resumed operations on or about January 6, 1939, because said men joined and assisted the Union, and by these acts the Company violated Section 8 (3) of the Act.

(5) On November 18, 1938, certain supervisory employees of the Company encouraged an anti-Union demonstration upon the Company's premises, and stood idly by when numerous employees of the Company and others, some of whom were former employees of the Company, gathered upon the premises of the Company at Corcoran, California, and engaged in an anti-Union demonstration, and by these acts the Company did violate Section 8 (1) of the Act.

(6) On November 18, 1938, certain supervisory employees of the Company actively encouraged the eviction from the Corcoran plant of Union employees by certain employees of the Company and others, some of whom were former employees of the Company. On the same day, certain supervisory employees of the Company permitted the eviction from the Corcoran plant, of Union employees by certain employees of the Company and others, some of whom had been former employees of the Company. By

these acts the Company did violate Section 8 (1) of the Act.

(7) On or about November 18, 1938, the Company, through certain supervisory employees and other employees requested Union members to leave the employment of the Company, and because of the intimidation accompanying such requests, the Company in fact discharged the following Union employees and thereby did violate Section 8 (3) of the Act:

1. George J. Andrade
2. Joe Briley
3. O. L. Farr
4. R. K. Martin
5. E. C. Powell
6. L. A. Spear
7. H. N. Wingo.

(8) On or about November 19, 1938, the Company refused to reinstate the employees named in Paragraph 7 of this Charge because they joined and assisted the Union, and by such acts violated Section 8 (3) of the Act.

(9) On or about November 18, 1938, the Company, through its executives and supervisory officials, instigated and formed a labor organization of its employees, first known as the "Company Union" and later named the "J. G. Boswell Company Employees' Association of Coreoran and Tipton," hereinafter called the "Association". Since the inception of the Association, the Company has given financial and other assistance to it, and has other-

wise dominated its administration, and since the formation of the Association, the Company has coerced its employees into joining the Association. By these acts the Company has violated Section 8 (2) of the Act.

(10) On or about November 13, 1938, the Company reduced the hourly wage of L. E. Ely from 40c to 35c per hour, and on or about December 2, 1938, the Company refused to reemploy said L. E. Ely, because he joined and assisted the Union and by said acts and each of them, the Company violated Section 8 (3) of the Act.

(11) Because of the unfair labor practices listed above, on or about January 20, 1938, the Union instituted a boycott of the Company's products, and stationed pickets at the Company's Corcoran plant, and said activities are being carried on at the present time.

(12) On January 30, 1939, the Company discharged Eugene Clark Ely because of his union activities and did thereby violate Section 8 (3) of the Act.

(13) On January 30, 1939, the Company and the Associated Farmers of Kings County, Inc. acting through the following-named individuals:

- | | |
|------------------|-------------------|
| 1. G. F. Archer | 4. Roy Filcher |
| 2. Roland Bailey | 5. Ralph Gilkey |
| 3. George Cutter | 6. Raymond Gilkey |

- | | |
|--------------------|----------------------|
| 7. Walter Grisham | 16. E. C. Salyers |
| 8. Louie Hammond | 17. Garland Salyers |
| 9. Phil Hammond | 18. Glen Sego |
| 10. J. W. Hubbard | 19. Ronald Squire |
| 11. Slim Jones | 20. William Turner |
| 12. Loyd Legget | 21. Robert Wilbur |
| 13. Joe Mackey | 22. Brice Sherman |
| 14. Ralph Marshall | 23. Russel Slaybough |
| 15. Forrest Riley | |

and over 200 others, did prepare and engage in an anti-Union demonstration, which took place both off and on the premises of the Company at Corcoran. At that part of the anti-Union demonstration which took place at the entrance of the Company's Corcoran plant, the above individuals did threaten Union pickets, and other Union men with physical violence if the Union engaged in further picketing, and these same individuals threatened both the Union pickets and other Union men with physical violence if they remained in Corcoran or engaged in further Union activities in the neighborhood. By these acts the Company and the Associated Farmers of Kings County, Inc., violated Section 8 (1) of the Act.

(14) The Company and the Associated Farmers of Kings County, Inc., have made up and caused to be circulated among the employers of labor in and

about Kings County, lists of the employees of the Company who are members of the Union and have requested such employers of labor to refuse employment to members of the Union on account of their membership and activities in the Union, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

(15) On March 1, 1939 the Company, the Associated Farmers of Kings County, Inc., and Corcoran Telephone Exchange did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said Corcoran Telephone Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in Union activities, and thereby engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

(16) By the acts and conduct alleged in Paragraphs 1 to 15 inclusive and other acts, the Company, the Associated Farmers of Kings County, Inc., and the Corcoran Telephone Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the National Labor Relations Act.

(17) On March 14 and thereafter, the Company, the Associated Farmers of Kings County, Inc., and Corcoran Telephone Exchange refused or caused to be refused the reinstatement of Margaret A. Dunn to her regular position of employment with said Corcoran Telephone Exchange for the reason that said

Margaret A. Dunn had filed charges with the National Labor Relations Board, and did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of said Act.

(18) By refusing to reinstate and by refusing to permit the reinstatement of said Margaret A. Dunn to her regular position of employment with the Corcoran Telephone Exchange, the Corcoran Telephone Exchange, the Company, and the Associated Farmers of Kings County, Inc., did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act.

(19) On and after March 14, 1939 the Company, Corcoran Telephone Exchange, and the Associated Farmers of Kings County, Inc., acting by and through its President, J. B. Boyett, threatened Margaret A. Dunn with the loss of employment of her husband, J. Ernest Dunn and her son Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character, if she did not withdraw her charges before the National Labor Relations Board; and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organiza-

tion making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

COTTON PRODUCTS AND GRAIN MILL
WORKERS' UNION LOCAL NO. 21798,
A.F.L.

E. F. PRIOR,
Business Representative
309 Broad Avenue, Wilmington,
Calif. Ph. 1455

Subscribed and sworn to before me this 4th day
of May, 1939 at Los Angeles, Calif.

FRANK A. MOURITSEN,
Attorney 21st Region, National
Labor Relations
Board, Federal Building

BOARD'S EXHIBIT 1-S

Date filed 5/18/39

[Title of Board and Cause.]

AMENDED COMPLAINT

It having been charged by the Cotton Products and Grain Mill Workers' Union, Local No. 21798, hereinafter called the "Union", affiliated with the American Federation of Labor, herein called the A. F. of L., that the J. G. Boswell Company, herein called the "Respondent", the Associated Farmers of Kings County, Inc., herein called the "Associated Farm-

ers", and the Corcoran Telephone Exchange, herein called the "Exchange", have engaged in and are now engaging in certain unfair labor practices as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board by the Regional Director for the Twenty-first Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1—as amended, hereby issues its Amended Complaint and alleges as follows:

1. Respondent is and at all times hereinafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of California, and at all times herein mentioned has engaged in and now engages in the business of growing and financing the growing of cotton, feeding cattle, ginning and baling cotton, extracting cottonseed oil from cottonseed, and the processing, selling and distribution of cotton, cottonseed oil, and cottonseed cake and meal. Respondent's main office is situated at 354 South Spring Street, in the City of Los Angeles, California, and it owns and operates offices, gins and/or mills at the following places: Corcoran, Bakersfield, Mendota, Porterdale, Tip-ton, Tulare, Fresno, McFarland, Calipatria, Blythe, and Calexico, all in the State of California; and Phoenix, Yuma, Somerton, Parker, Buckeye, Camelback, Coolidge, Litchfield, Scottsdale, Litchfield Park, and West Chandler, all in the State of Arizona.

2. Associated Farmers is and at all times here-

inafter mentioned has been a corporation organized and existing under and by virtue of the laws of the State of California, and at all times herein mentioned has actively opposed and prevented the exercise by employees of rights guaranteed to employees by the National Labor Relations Act, and at all times herein mentioned has acted, directly and indirectly, in the interest of Respondent, and is an employer within the meaning of Section 2, subdivision (2) of the Act.

3. The Exchange is a corporation organized under and existing by virtue of the laws of the State of California since the 29th day of November, 1922, and at all times herein mentioned, has engaged in, and now engages in the business of operating a telephone system and transmitting and receiving telephonic communications in the City of Corcoran, California, and Kings County, California; said Exchange owns and operates lines and cables which connect with lines and cables of the Pacific Telephone and Telegraph Company, a subsidiary of the American Telephone and Telegraph Company, and by and through such connections said Exchange transmits telephonic communications in interstate commerce.

4. Respondent in the course and conduct of its business and in the operation of its plant at Corcoran, California, causes and has continuously caused large quantities of materials consisting of burlap and metal bands to be purchased and transported in interstate and foreign commerce, and through

states of the United States other than the State of California, to the Corcoran plant in the State of California; and causes and has continuously caused in excess of fifty per cent. (50%) of all cotton, cottonseed oil, and cottonseed cake and meal purchased, processed, produced, and baled by it to be sold, transported, and distributed in interstate and foreign commerce from the Corcoran plant in the State of California, into and through states of the United States other than the State of California, upon the high seas, and into foreign countries.

5. The Union is a labor organization within the meaning of Section 2, subdivision (5) of the National Labor Relations Act.

6. Respondent by its officers, agents, and employees while engaged at its Corcoran plant as aforesaid, did seek to discourage and did thereby discourage membership of its Corcoran plant employees in and their affiliation with the Union, by statements to its employees criticizing and condemning the Union and its officers; by questioning its employees regarding their Union affiliation; by advising individual employees that "the Union was no good"; that "the Company will never recognize the Union"; that "if the boys wanted to work for Boswell's they'd better not join the Union"; that "there was no place for Union men in the plant"; that "the oil mill was closing down because of the Union"; that "the Company does not want a Union"; inducing certain of its employees and others to spy upon and make reports to it regarding the activities of the

Union and its members; by offering employment to discharged Union members if they would withdraw from the Union; and by such acts and each of them and by other acts did interfere with, restrain and coerce its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the said Act.

7. The acts alleged in Paragraph 6 above, occurred on or about July 5, 6, 15, 16, and 17, 1938; September 19, 20, 1938; October 29, 31, 1938; almost every day during the month of November, 1938; and generally during the months of July, September, October, November, and December of 1938, and January of 1939; among those participating on behalf of Respondent in the acts alleged were: Gordon Hammond, Joseph Hammond, Thomas Hammond, and Louis T. Robinson, all supervisory employees of Respondent.

8. On or about November 17, 1938, Respondent discharged W. R. Johnston, Stephen J. Griffin, and Elmer Eller; and on or about January 30, 1939, discharged Eugene Clark Ely, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

9. On or about November 15, 1938, Respondent locked out Boyd Ely and Walter Winslow by shutting down the oil mill where they were employed, and refused and failed to rehire said employees when the

oil mill resumed operations on or about January 6, 1939, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

10. On or about November 13, 1938, Respondent reduced the hourly wage of L. E. Ely from 40c to 35c per hour, and on or about December 2, 1938, Respondent refused to reemploy said L. E. Ely because he joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

11. On or about November 18, 1938, Respondent, acting through its officers and agents, did encourage and permit an anti-Union demonstration at its Corcoran plant, and with full knowledge did encourage and permit employees and supervisory employees to drive (by means of force and violence and threats of force and violence) from their work and from the plant at Corcoran, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear, and H. N. Wingo, and did nothing to prevent such eviction, nor to protect the above-named employees, because said employees joined and assisted the Union, and engaged in concerted activities with other employees for their mutual aid and protection.

12. On or about November 19, 1938, Respondent refused and failed to reinstate to their positions the employees named in Paragraph 11 above, for the reason that they joined and assisted the Union, and engaged with other employees in concerted activities for their mutual aid and protection.

13. By the acts alleged in Paragraphs 8, 9, 10, 11 and 12 above, and by each of them, Respondent did discriminate in regard to hire and tenure of employment to discourage membership in the Union, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

14. By the acts alleged in Paragraphs 8, 9, 10, 11 and 12 above, and by each of them and by other acts, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its Corcoran plant employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

15. On or about November 18, 1938, Respondent by its officers, agents and employees while engaged at its Corcoran plant as aforesaid, did form and cause to be formed at its Corcoran plant a labor organization within the meaning of Section 2, subdivision (5) of the Act, first known as the "Company Union" and subsequently known as "J. G. Boswell Company Employees' Association of Corcoran and Tipton", hereinafter called the "Association".

16. Respondent formed, and caused the Association to be formed by supervisory employees of Respondent. Said supervisory employees actively participated in the formation of the Association and became officers and members thereof. Respondent has dominated and interfered with and is now dominat-

ing and interfering with the administration of the Association by permitting the Association to hold meetings at the Corcoran plant of Respondent, by threatening employees with loss of employment if they did not become members of the Association and attend its meetings, by increasing the wages and amount of employment of employees who became members of the Association, and by soliciting employees during working hours to become members of and to attend meetings of the Association.

17. The acts alleged in Paragraphs 15, and 16, above, occurred on or about November 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, of the year 1938, and on or about December 5, 6, 7, 8, 16, 17, 18 and 19, of the year 1938, and on or about January 6 and 29, of the year 1939, and generally throughout the months of November, and December, 1938, and January, 1939; and said acts were participated in by supervisory employees of Respondent, including Oscar Busby, Rube Lloyd, Bill Robinson, J. T. Mize, Thomas Hammond, J. W. Hubbard, Joseph Hammond, and Louis T. Robinson.

18. By its activities described in Paragraphs 15 to 17, inclusive, above, and by each of them and by other acts, Respondent did dominate and interfere with the formation and administration of the Association and has contributed and is contributing financial and other support thereto, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8, subdivision (2) of the Act.

19. By its activities described in Paragraphs 15 to 17, inclusive, above, and by each of them and by other acts, the Respondents did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

20. Because of the unfair labor practices alleged herein on or about January 20, 1939, the union instituted a boycott of Respondent's products, and stationed pickets at Respondent's Coreoran plant, and said activities are being carried on at the present time.

21. On January 30, 1939, Respondent and the Associated Farmers, acting through the following-named individuals:

1. G. F. Archer
2. Roland Bailey
3. George Cutter
4. Roy Filcher
5. Ralph Gilkey
6. Raymond Gilkey
7. Walter Grisham
8. Louie Hammond
9. Phil Hammond
10. J. W. Hubbard
11. Slim Jones
12. Lloyd Liggett
13. Joe Mackey

14. Ralph Marshall
15. Forrest Riley
16. E. C. Salyers
17. Garland Salyers
18. Glen Sego
19. Ronald Squire
20. William Turner
21. Robert Wilbur
22. Brice Sherman
23. Russel Slaybough

and over 200 others did engage in an anti-Union demonstration, and did by means of force and violence, and threats of force and violence drive from the vicinity of the entrance to Respondent's plant at Corcoran Union pickets, and did threaten Union pickets and other Union members with physical violence if the Union engaged in further picketing, and did threaten Union pickets and Union members with physical violence if they remained in Corcoran, or engaged in further Union activities in Corcoran and vicinity.

22. Respondent and the Associated Farmers, acting through the individuals named in Paragraph 21, above, and over 200 other individuals whose names are not at this time known to the Regional Director, did by the acts alleged in Paragraph 21, above, and by each of them and by other acts, interfere with, restrain, coerce, and are interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in un-

fair labor practices within the meaning of Section 8, subdivision (1) of the Act.

23. On or about January 20, 1939 and at all times thereafter Respondent and the Associated Farmers, acting directly and indirectly in the interest of Respondent, prepared and circulated among the employers of labor in and about Kings County, California, lists of employees of Respondent who are members of the Union and requested such employers of labor to refuse employment to members of the Union on account of their membership in and activities for the Union, and did thereby engage in and are now engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

24. On or about March 2, 1939 the Respondent, Associated Farmers, and the Exchange, for the purpose of discouraging membership in the Union, did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in and was engaging in union activities and thereby said Respondent, Associated Farmers, and Exchange engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

25. On or about March 2, 1939 the Associated Farmers and the Exchange, acting directly and indirectly in the interest of Respondent, for the purpose of discouraging membership in the Union, did discharge and cause to be discharged one Margaret A. Dunn from her position of employment with said

Exchange for the reason that they suspected that said Margaret A. Dunn had engaged in and was engaging in union activities and said Associated Farmers and Exchange thereby engaged in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

26. By their activities described in Paragraphs 24 and 25 above and by each of them and by other acts Respondent, the Associated Farmers and the Exchange did interfere with, restrain and coerce and are interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

27. On or about March 14, 1939 and thereafter Respondent, Associated Farmers and the Exchange refused to reinstate or to permit the reinstatement of Margaret A. Dunn to her regular position of employment with said Exchange for the reason that said Margaret A. Dunn filed charges with the National Labor Relations Board, and by such acts said Respondent, Associated Farmers and Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

28. On or about March 14, 1939 and thereafter the Associated Farmers and the Exchange, acting directly and indirectly in the interest of Respondent, refused to reinstate or to permit the reinstatement of Margaret A. Dunn to her regular position of em-

ployment with said Exchange for the reason that said Margaret A. Dunn filed charges with the National Labor Relations Board, and by such acts said Associated Farmers and Exchange did engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (4) of the Act.

29. By their activities described in Paragraphs 27 and 28 above and by each of them and by other acts, Respondents, the Associated Farmers and the Exchange did interfere with, restrain and coerce and are interfering with, restraining and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, and did thereby engage in and are thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

30. On and after March 14, 1939 Respondent, the Exchange, and the Associated Farmers, acting by and through its president, J. B. Boyett, threatened Margaret A. Dunn with Loss of employment of her husband, J. Ernest Dunn, and her son, Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character if she did not withdraw her charges before the National Labor Relations Board, and said Respondent, Exchange, and Associated Farmers did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

31. On and after March 14, 1939 the Exchange and the Associated Farmers, acting directly and in-

directly in the interest of Respondent, threatened Margaret A. Dunn with loss of employment of her husband, J. Ernest Dunn, and her son, Walter Dunn; with a boycott of the beauty parlor operated by her son and daughter, Jack and Margaret Dunn; and with a slanderous attack upon her character if she did not withdraw her charges before the National Labor Relations Board, and said Exchange and Associated Farmers did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of the Act.

32. The aforesaid acts of Respondent, as set forth in paragraphs 6 to 19 inclusive, 21, 22, 23, 24, 26, 27, 29 and 30 above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), (3), and (4); and Section 2, subdivisions (6) and (7) of the Act.

33. The aforesaid acts of the Associated Farmers, as set forth in Paragraphs 21 to 31 inclusive, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (4); and Section 2, subdivisions (6) and (7) of the Act.

34. The aforesaid acts of the Exchange, as set forth in Paragraphs 24 to 31 inclusive, above, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (3) and (4); and Section 2, subdivisions (6) and (7) of the Act.

35. The aforesaid acts of Respondent, set forth in paragraphs 6 to 19 inclusive, 21, 22, 23, 24, 26, 27,

29 and 30 above, occurring in connection with the operations of Respondent described in Paragraphs 1 and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

36. The aforesaid acts of the Associated Farmers set forth in Paragraphs 21 to 31 inclusive, above, occurring in connection with the operations of Respondent described in Paragraph 1 and 4 above, and occurring in connection with the operations of the Exchange described in Paragraph 3, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

37. The aforesaid acts of the Exchange set forth in paragraphs 24 to 31 inclusive, above, occurring in connection with the operations of the Exchange described in Paragraph 3 above, and occurring in connection with the operations of Respondent described in Paragraphs 1 and 4 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Wherefore the National Labor Relations Board on the 6th day of May, 1939 issues its Amended Complaint against J. G. Boswell Company, Associated Farmers of Kings County, Inc. and the Corcoran Telephone Exchange, Respondents herein.

AMENDED NOTICE OF HEARING

Please Take Notice that on the 18th day of May, 1939, in the American Legion Hall, Corcoran, California, at 9:30 A. M. in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 1—as amended, Article IV and Article II, Section 23, on the allegations set forth in the above Amended Complaint, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You Are Further Notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Amended Complaint, on or before the 16th day of May, 1939.

Enclosed for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In Witness Whereof the National Labor Relations Board has caused this, its Amended Complaint and its Amended Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 6th day of May, 1939.

[Seal] TOWNE NYLANDER,

Regional Director, 21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse Bldg.
Los Angeles, California

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. XXI-C-1025

In the Matter of

J. G. BOSWELL COMPANY, a Corporation;
ASSOCIATED FARMERS OF KINGS
COUNTY, INC., a Corporation; and COR-
CORAN TELEPHONE EXCHANGE, a Cor-
poration

and

COTTON PRODUCERS AND GRAIN MILL
WORKERS UNION, LOCAL 21798, A. F.
of L.

INTERMEDIATE REPORT

On November 21, 1938, the California State Council of Soap and Edible Oil Workers, A. F. of L., filed charges alleging violation of Section 8 (1) and (3) of the Act, on behalf of Cotton Producers and Grain Mill Workers, Local 21798, with the Twentieth Region at San Francisco, California, against the respondent Boswell Company. Pursuant to Article II, 37 (c) of the National Labor Relations Board Rules and Regulations—Series 1, as amended, the National Labor Relations Board, through its Secretary, on December 22, 1938, ordered this case transferred to and continued in the Twenty-first Region as Case No. XXI-C-1025.

On January 17, 1939, an amended charge was filed enlarging the 8 (3) charge and including an 8 (2) charge; on February 6, 1939, a second amended

charge was filed including a charge against the Associated Farmers of Kings County, California, and on March 4, 1939, a third amended charge was filed, enlarging on the 8 (1) and (3) charge formerly filed. All of the amended charges were filed with the Twenty-first Region of the National Labor Relations Board at Los Angeles, California, and upon the third amended charge the National Labor Relations Board, by Aaron W. Warner, Acting Regional Director for the Twenty-first Region, on the 4th day of March 1939, issued its complaint with notice of hearing against the J. G. Boswell Company, a corporation, and the Associated Farmers of Kings County, Inc., a corporation. A few days thereafter, upon appropriate order, the hearing on the complaint was indefinitely postponed. On March 14, 1939, Margaret A. Dunn filed a charge with the Twentieth Regional Office at San Francisco, charging the Corcoran Telephone Exchange with discriminatorily discharging her from her job. That charge was later withdrawn by Margaret A. Dunn.

On May 4, 1939, a fourth amended charge was filed in the office of the Twenty-first Region containing all the facts set forth in the third amended charge with the added item of a charge involving 8 (1), (3) and (4) against the Corcoran Telephone Exchange and the Associated Farmers of Kings County as well as the J. G. Boswell Company. On May 6, 1939, an amended complaint was issued by the Regional Director of the Twenty-first Region against the J. G. Boswell Company, Associated Farmers of Kings County and the Corcoran Telephone Exchange. The amended complaint, which will hereinafter be

more fully discussed, the charges and notice of hearing herein were duly served upon the respondents, the Union, and the J. G. Boswell Employees Association of Coreoran and Tipton.

The complaint against Boswell Company, Associated Farmers of Kings County, Inc., and the Coreoran Telephone Exchange, among other things, alleged: (a) That each of the companies above-mentioned are corporations; (b) that respondent, Boswell Company by its officers and agents, discouraged membership in Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., hereinafter called Local No. 21798, by inducing certain of its employees and others to spy upon and make reports to it regarding the activities of Local 21798 and its members; (c) By advising individual employees that the Union was no good and that the company would never recognize the Union; (d) That if the employees wanted to work for Boswell Company they had better not join the Union and that there was no place for union men in the plant; (e) That on or about November 13, 1938, respondent reduced the hourly wages of L. Ely from 40 cents to 35 cents per hour; (f) That on or about November 15, 1938, respondent locked out Boyd Ely and Walter Winslow by shutting down the oil mill where they were employed; and that the respondent failed to reemploy each of said employees when the oil mill resumed operations on or about January 6, 1939; and on November 17 discharged W. R. Johnson,¹ Stephen J. Griffin and Elmer Eller because they joined and assisted the Union; (g) That

¹Wherever the name Johnson appears, it should be Johnston.

on or about November 18, 1938, respondent, acting through its officers and agents, did encourage and permit an anti-union demonstration at its plant, and with full knowledge did permit employees and supervisory employees to drive out by means of force and threats of force and violence from their work at the plant in *Corcoran County*, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear, and H. M. Wingo, and that on November 19, 1938, respondent refused and failed to reinstate said employees to their former positions; (h) that on or about January 20, 1939, respondent discharged Eugene Clark Ely; (i) all of the above-mentioned employees were discharged and the wages of L. E. Ely were reduced from 40 to 35 cents per hour for the reason that said employees joined and assisted in the affairs of Local No. 21798; (j) that by the above acts alleged, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its Corcoran employees in the exercise of the rights guaranteed in Section 7 of the Act, and did engage in, and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act; (k) that respondent, on or about November 18, 1938, by its officers and agents while engaged at its Corcoran plant did form and cause to be formed at its Corcoran plant a labor organization known as the J. G. Boswell Employees Association of Corcoran and Tipton; (l) that respondent dominated and interfered with, and is now dominating and interfering with the administration of the J. G. Boswell Employees Association of Corcoran and Tipton, here-

inafter called the Independent, by permitting the Independent to hold meetings at its Corcoran plant; by threatening employees with loss of employment if they did not become members of the Independent; and by soliciting employees during working hours to become members thereof; (m) that by such activities, respondent did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act; (n) that on January 30, 1939, respondent and the Associated Farmers of Kings County, Inc., acting through certain named individuals and others unnamed did engage in anti-union demonstration and did, by means of force and violence and threats of force and violence, drive from the vicinity of the entrance to the respondent's Corcoran plant union pickets and did threaten union pickets and other union members with physical injury if the Union engaged in further picketing; (o) that on or about March 2, 1939, respondents, Boswell Company and Associated Farmers caused the Corcoran Telephone Exchange to discharge Margaret A. Dunn for the purpose of discouraging membership in the Union; (p) that on or about March 14, 1939, and at all times thereafter, respondent, Corcoran Telephone Exchange, refused to reinstate Margaret A. Dunn to her regular position with said Exchange because of pressure brought to bear upon it by the respondents, Boswell Company and Associated Farmers; (q) that on or about March 14, 1939, respondent, Boswell Company, Associated Farmers of Kings County, and Corcoran Telephone Exchange, acting through the president of the Associated Farm-

ers, did threaten Margaret A. Dunn with loss of employment of her husband, J. Earnest Dunn and her son Walter Dunn with a boycott of a beauty parlor operated by her son and daughter, Jack and Margaret Dunn, and with slanderous attack upon her character if she did not withdraw her charge which she had filed with the National Labor Relations Board; (r) that by said acts above enumerated, respondents Boswell Company, Corcoran Telephone Exchange and Associated Farmers of Kings County, Inc., did thereby engage in and are engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (4) of the Act; (s) that all of the afore-said acts as set forth above constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (4) and Section 2 (6) and (7) of the National Labor Relations Act.¹

The respondent, Boswell Company, filed an answer admitting some of the allegations of the complaint but alleged that W. R. Johnson, Stephen A. Griffin and Elmer Eller were employed in seasonal work; that there was a very short ginning season in 1938 and that because of curtailment of ginning operations on or about November 17, 1938, the said three

¹The National Labor Relations Act is herein referred to as the Act; the National Labor Relations Board as the Board; Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., as Local 21798; J. G. Boswell Employees Association of Corcoran and Tipton, as the Independent; J. G. Boswell Company as Boswell Company; Associated Farmers of Kings County, Inc., a corporation, as Associated Farmers; and the Corcoran Telephone Exchange, a corporation as the Exchange.

employees were laid off solely and entirely due to seasonal decline in operations; that Eugene Clark Ely left his employment about January 30, 1939, of his own free will without notice to respondent and denied that respondent violated any provision of the National Labor Relations Act.

The Associated Farmers of Kings County, Inc., a California corporation, filed its answer to the amended complaint, first admitting some of the allegations contained therein, but denied knowledge as to the matters alleged in Paragraph 1 of said complaint and specifically denied Paragraph 2 of said complaint and that it is without knowledge as to the matters alleged in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of said complaint and denied or alleged that it is without knowledge of any of the other facts stated in the amended complaint, and further denied that the Associated Farmers have in any way violated the National Labor Relations Act.

The Corcoran Telephone Exchange filed its answer admitting some of the allegations contained in the complaint but denied it had violated any provision of the National Labor Relations Act, and further denied knowledge of any of the matters alleged in Paragraph 8 of said amended complaint.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board, conducted a hearing from May 17 to June 16, 1939, both inclusive, at Corcoran, California. All parties were afforded an opportunity to participate in the hearing, to call, examine, cross-examine witnesses and to introduce evidence.

The undersigned gave the J. G. Boswell Employees Association of Corcoran and Tipton the privilege of securing counsel. Samuel Brenes, treasurer of the J. G. Boswell Employees Association of Corcoran and Tipton, hereinafter referred to as the Independent, advised the undersigned on the record that the Independent did not desire to intervene or to retain counsel.

Before the commencement of the hearing the respondents Boswell Company, Associated Farmers and the Exchange filed written motions with the Regional Director of the Twenty-first Region to dismiss the action against said respondents.

At the beginning of the hearing counsel for respondents renewed the written motions and moved that the proceedings be dismissed. The undersigned denied the motions.

During the course of the hearing Board's counsel moved to amend paragraph 8 of the complaint to read: "(1) On or about March 30, 1938, respondent discharged James W. Gilmore and on or about July 1, 1938, refused to reinstate Gilmore because he attempted to organize the employees of the company; (2) On November 17, 1938, respondent discharged W. R. Johnson, Steven J. Griffen, and Elmer Eller; (3) On or about January 30, 1939, respondent discharged Eugene Clark Ely." Board's counsel stated that the amended charge contains the names above-mentioned but inadvertently were left out of the complaint. Over the objection of the respondents' counsel the undersigned granted the motions, giving respondents five

(5) days to answer the new allegations as to James W. Gilmore, W. R. Johnson, Steven J. Griffen and Elmer Eller, and permitted respondents to amend their answer to meet the new charges. However, the respondents waived the right of the five (5) days as to W. R. Johnson, Steven J. Griffen, and Elmer Eller, and amended their answers to meet the new charges.

During the hearing counsel for the Exchange; first, moved to strike testimony from the record on page 2283, line 8, to page 2286, line 6, of the transcript of June 10, 1939; second, to strike all testimony adduced on behalf of the Board in support of the complaint against the Exchange upon the ground that the Board had no jurisdiction over that business or corporation in that it had not been shown that said company is engaged in interstate commerce. The undersigned reserved ruling on both motions. Those motions are now denied.

At the conclusion of the Board's case, Board's counsel moved to amend the complaint to conform to proof adduced in so far as dates and misspelling of names. Such amendment in no way changed or enlarged the allegations set forth in the complaint. The motion was granted with the consent of all parties.

At the conclusion of the Board's case the undersigned granted permission to respondent's counsel, if he so desired, time for preparation of respondents' defense. Counsel for respondents advised the undersigned that no time was needed and that the respondents were ready to proceed.

At the conclusion of the hearing the undersigned granted leave to all parties to file briefs with the Trial Examiner within ten (10) days from the date of receiving the transcript of the testimony,² and offered an opportunity for oral argument before the undersigned. Counsel appearing for the various parties waived oral argument. None of said parties have filed briefs with the undersigned.

Upon the record thus made, and from his observation of the witnesses, and examination of the exhibits, the undersigned makes, in addition to the above, the following specific findings of fact:

FINDINGS OF FACT

I. Respondent's Business

1. The J. G. Boswell Company is a corporation organized under and existing by virtue of the laws of the State of California since October 13, 1925. It is authorized to transact business in the State of Arizona and is engaged both in the States of Arizona and California in the business of growing and financing the growing of cotton, ginning and baling cotton, extracting cotton seed oil from cotton seed, selling and distributing cotton, cotton

²The official court reporter in transcribing the testimony of the last day of the hearing used the term "from the date of receiving of the Intermediate Report" when he should have used "from the date of receiving the transcript of testimony." The undersigned wired respondents' counsel of that fact and inquired as to whether or not respondents had been misled. Various counsel for the respondents replied they were not misled and did not wish to file briefs with Trial Examiner.

seed oil, cotton seed cake and meal, and purchasing, feeding and selling cattle. The Company owns and operates seven cotton gins, a cotton seed oil mill and a cattle feed yard in the State of California, and 10 gins and a cotton seed oil mill in the State of Arizona. At Corcoran, California, respondent operates six cotton gins, a cotton seed oil mill and a cattle feed yard.

2. During the fiscal year from July 1, 1937 to June 30, 1938, the respondent engaged in operations as follows:

Cotton ginned and baled in Arizona.....	60,055 bales
Cotton ginned and baled in California.....	57,478 bales

Total	117,533 bales
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Cotton seed crushed and processed in Calif.....	17,220. tons
Cotton seed crushed and processed in Arizona....	23,877.875 tons

Total	41,097.875 tons
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Cattle purchased in Texas.....	408 head
Cattle purchased in Arizona	1,771 head
Cattle purchased in California.....	1,146 head

Total	3,325 head
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Cattle sold in California	2,407 head
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The remaining cattle were not sold by respondent during this period.

At the Corcoran plant during the same period respondent engaged in the following operations:

Cotton ginned	68,355,839 pounds
Cotton seed crushed and processed.....	34,440,069 pounds
Cotton baled—47,111 bales, of which 40,138 were owned by respondent and 6,873 bales were owned by others.	

Linters bale—Total 5,096 bales.

Cotton seed oil produced—714,958 gallons.

Cotton seed cake produced—approximately 10,000 tons.

3. In baling the cotton respondent used 52,206 patterns, of which the jute came from India and the steel bands from Alabama.

4. All of the cotton and cotton seed handled at the Corcoran plant was purchased or grown by the respondent in the State of California. All cattle feed operations in California of respondent were carried on at the Corcoran plant, except as to certain cattle which were fed on pasture. Certain cattle of other parties were fed by respondent in Arizona at Litchfield Station, under a contractual agreement for the feeding thereof.

5. During the same period the output of respondent's Corcoran plant was disposed of in the following manner: 40,138 bales of cotton and 862 linters were shipped out of the State of California by respondent by means of the Atchison Topeka and Santa Fe Railway Company, and the following steamship companies; Furness (Pacific) Ltd., Dollar Line (now American President Lines); General Steamship Corporation; Norton Lilly; Williams Diamond Co.; The Inter-Ocean Steamship Corporation; American Hawaiian; N.Y.K.; Mitsui Ltd.; Salen Line; Swayne Hoyt; 650 bales of linters were sold and shipped to points within the State of California and 3,584 bales of linters were sold f.o.b. Corcoran, California. Seven hundred fourteen thousand nine hundred fifty-eight gallons of cotton seed oil were sold to the Swift and Company Refinery, Vernon, California. Approximately

60 tons of cotton seed cake were shipped outside the State of California and the remainder were sold or consumed within said State.

6. The respondent, Boswell Company, owns, controls and operates a financing corporation known as the J. G. Boswell Farm Loan Company, hereinafter called the Loan Company. The Loan Company finances various farmers in that community during the growing season. The farmer, when making an application for a loan, submits to the Loan Company an estimate of the cost of growing and harvesting his crops including the approximate number of employees needed and the cost of such hire. When the loan is approved the borrower executes a chattel mortgage on the crops to the Boswell Company. At various intervals the pay roll, as well as the other expenses incurred during said period, are submitted to the Loan Company and the Loan Company in turn pays the employees of the farmer as well as other expenses incurred by him during said period. When the crop is harvested it is delivered to the Boswell Company at a certain designated price and an accounting is had with the farmer who borrowed the money from the Loan Company. The Boswell Company also controls, operates and manages a number of farm ranches upon which are placed foremen who direct the operations of said ranch for said Company. Respondent controls the water supply and charges the farmer \$8 per acre for each irrigation or watering.

The Associated Farmers of Kings County, Inc.

7. The Associated Farmers of Kings County, Inc., was organized between approximately September 8 and October 18, 1938. It received its articles of incorporation from the Secretary of State of California on October 18, 1938, and since that date and now is a non-profit corporation. One of the primary purposes of the incorporation of the Associated Farmers of Kings County, Inc., hereinafter called the Associated Farmers, was to combat organized labor. It is one of the approximately 43 units which go to make up the Associated Farmers of California, a State organization. The organization, the purpose thereof and its connection with the respondent, Boswell Company, as well as the part it played in the labor dispute between the J. G. Boswell Company and the Cotton Producers and Grain Mill Workers Union, Local 21798, will hereinafter be fully discussed.

The Corcoran Telephone Exchange

8. The Corcoran Telephone Exchange, hereinafter called the Exchange, is a corporation organized under, and existing by virtue of the laws of the State of California since 1923. C. H. Glenn, who is its duly elected president, is also the principal stockholder. The Exchange is engaged in the business of furnishing local and long distance communication service throughout Kings County. In the operation of its system the respondent maintains connections with the Pacific Telephone and Tele-

graph Company³ of Hanford, California. The Pacific Telephone and Telegraph Company, by means of cables or wires plugged into the main switchboard of the Exchange at its office in Corcoran, California, and for such connection and the source thereto allows the Exchange 30 per cent of all outgoing long distance telephone calls. In addition to furnishing local service, the Exchange, one of the respondents herein, as an integral part of the Pacific Telephone and Telegraph Company, fur-

³During the past year ending February 15, 1938, the Pacific Telephone and Telegraph Company, with a branch at *Hanover*, California, owned and operated 1,853,229 telephones in service. The pay rolls for 1938 were \$54,375,235. As of December 31, 1938, there were also 282,922 telephones served by 309 other companies with which its toll and long distances lines connected. All of the telephones operated on the Pacific Coast by the Pacific Telephone and Telegraph Company and those independently owned and operated by connected companies for complete connection with the Bell System, of which the Pacific Telephone and Telegraph Company is a constituent part. At the end of the year the Bell System telephones totaled in round figures, 15,761,000 and they are inter-connected to 4,124,000 served by connected companies, all connected by wire or radio-telephony with 17,915 telephones in other countries and continents. Ninety-three per cent of the world's 40,600,000 telephones are now inter-connectable and the Pacific Coast has promptly available this world-wide service. The Pacific Telephone and Telegraph Company maintains branch exchanges in several different States. See Report of Directors of the Pacific Telephone and Telegraph Company to the Shareholders, dated February 15, 1939, Board Exhibit No. 20.

nishes its subscribers with long distance telephone service to all parts of the United States. It maintains the only telephone service in Corcoran and without its connection with the Pacific Telephone and Telegraph Company long distance service to and from that community would be shut off.

9. The total mileage of all lines and cables operated by the Exchange is 139.9 miles. All new equipment and material purchased by the Exchange during the past fiscal year amounted to approximately \$3,500. Most of the material was purchased from the Graybar Electric Company at San Francisco. The cables which were used to replace the old cables were shipped from Illinois to the Graybar Electric Company of San Francisco and in turn shipped by said company to the Exchange at Corcoran.

10. During the period from December 21, 1937, to December 21, 1938, the gross income of the Exchange was \$15,897.39. Of that amount the taxes collected on toll calls amounted to \$937.35. The tax is collected by the respondent as agent for the taxation authorities. The out-of-town calls paid in through the Hanford Company amounted to \$5,248.48. Of that sum long distance calls outside of the State amounted to \$177.13. During the period in question the total number of calls which went through the Exchange were 35,588 and of that number 77 were long distance calls to points outside the State of California. There were several calls to points in the States of Texas, Arizona, New Mexico, and Nevada. The Telephone Ex-

change is the only telephone company operating in Corcoran, California, and without its connection with the Pacific Telephone and Telegraph Company, long distance telephone calls from Corcoran would be impossible. Some of the larger subscribers to the Exchange are the J. G. Boswell Company, the Aitcheson, Topeka and Santa Fe Railroad, and the Western Union Company.

III. The Organizations Involved.

11. The Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L. and the J. G. Boswell Employees Association of Corcoran and Tipton, an independent organization, are both labor organizations within the meaning of the Act. The Cotton Producers and Grain Mill Workers Union of which Local 21798, A. F. of L. is an affiliate, admits to membership employees of other companies doing like and similar work, while the J. G. Boswell Employees Association of Corcoran and Tipton only admit to membership the employees of those two plants owned and operated by respondent.

IV. The Unfair Labor Practices

A. Intimidation, restraint and coercion

12. The operations of respondent Boswell are seasonal and dependent wholly on the volume of cotton produced by the farmers who are its customers. At Corcoran it is in competition with another company, San Joaquin Ginning Company which engages in the same general type of operations.

13. The season usually begins in late September or early October of each year, with the opening of the cotton picking. At this time the gins are started and thereafter run more or less continuously until the cotton picking is completed. In heavy seasons such as was experienced in 1937-1938, the gins run 24 hours with two shifts of 12 hours each. In lighter seasons such as 1938-1939, which in volume was only about 25 per cent of the 1937-1938 season, only one shift of 12 hours is operated.

14. In 1938, the first gin was started September 30. Thereafter only four of the six gins operated, one of them shutting down November 25, one on December 3, one on December 5 with intermittent operations until December 30 and the fourth running continuously until December 31 and intermittently until January 24.

15. The oil mill started October 24, ran until November 13, after which it operated 8 days in January 1939, 3 days in February, 4 days from April 29 to May 2 and at the close of the hearing on June 16, had operated 2 days in June.

16. With these fluctuations in operations, there was a paralleling fluctuation in employment, the low point being habitually struck in the middle of April each year.

17. The peak of employment is reached in November of each year. In the 1937-1938 season, the peak was 183 employees on November 18, 1937 against a low of 45 on April 14, 1938. In the 1938-1939 season, the peak was 84 on November 17, 1938 against a low of 55 on April 22, 1939.

18. The employment history of the older or regular employees of respondent reflects the fact that, notwithstanding the numerous intermittent lay-offs, they were still regarded as Boswell employees to the extent that when an operation was about to start up, the men usually employed on the jobs involved were informed by various methods, including personal calls by Gordon Hammond or his messengers and told to report. In other instances, the men themselves kept in touch with the office, making inquiries at about the time the mill or gin would ordinarily start and were put to work. In any event, there is no evidence that any of the seasonal lay-offs were regarded as terminations of employment.

19. In January of 1938, James W. Gilmore, an employee of respondent, Boswell Company, began talking to his fellow employees about the formation of a union. Gilmore testified that he talked to a number of the employees, all of whom he thought were known to him to be in favor of a union. Some of those to whom he talked were Lonnie Spear, John Andrade, Dick White and a man by the name of Workman, employees of respondent, but did not have any of them sign membership cards in the Union. White and Workman later became members of the Independent. Gilmore was laid off from work on or about March 30, 1938. The union activities of Gilmore and his lay-off will be hereinafter more fully discussed.

20. O. L. Farr, an employee of the respondent Boswell Company, on March 15, 1938, in the pres-

ence of his brother, who at that time was president of a local union in Bakersfield, California, told E. F. Prior, secretary-treasurer of the California State Council of Edible Oil Workers, affiliated with the A. F. of L., that in his opinion the employees of the Boswell Company were interested in organizing a union. Farr gave the names of the officials of the respondent to Prior. Prior went to the Boswell plant, gave his card to the PBX operator and requested an interview with Louis T. Robinson, general manager, or Gordon L. Hammond, plant manager. Hammond could not be found about the plant and Prior left without seeing either Hammond or Robinson.

21. About a week or two following Prior's visit to the plant, the oil mill of respondent ceased operations. No further organizational work was attempted until July 6, 1938.

22. On July 6, 1938, Prior returned to Corcoran and met O. L. Farr, an employee of respondent, Boswell Company, who gave him a list of some 30 names of respondent's employees, who were interested in union affairs. Prior told Farr he would call a meeting of said employees for July 13, 1938. Such a meeting was held on July 13 in the American Legion Hall at Corcoran and was attended by Farr and other interested employees, as well as Frank Gonders, Jack Owens and Clyde Sitton, a nephew of Gordon L. Hammond, plant manager of respondent. Prior explained the purpose of the meeting to those present. Gonders, an old and faithful employee of respondent who later became a

member of the Independent, told Prior, in the presence of others, that the employees of the Boswell Company were well satisfied with 35 and 50 cents per hour, and that they really wanted no organization in the plant. Those six or eight who were interested in the organization signed membership cards at that meeting. James W. Gilmore, an employee of respondent and who in January 1938 began talking with a number of the employees of the respondent about organizing a union, told Prior that he had not been recalled to his job in the oil mill when said mill started operations on July 1, 1938, because of his union activities. Gilmore advised Prior of some of the anti-union activities of Gordon L. Hammond, plant manager, including a conversation he had with Hammond about June 1, 1938, at which time Hammond said to Gilmore "I thought you knew quite a bit about threatening to start a union" and asked Gilmore "if he had them all signed up."

23. On July 17, 1938, Prior filed charges with the Regional Office of the Board at Los Angeles, California, alleging that respondent, Boswell Company, had violated Section 8 (1) of the Act. No further organizational work was attempted until September 2, 1938, at which time Prior went to the home of Farr and talked to him in the presence of R. K. Martin and H. M. Wingo, employees of the respondent company. At said meeting the above-named employees turned over to Prior a number of applications for membership in the organi-

zation, which they had secured from employees of the respondent, Boswell Company. On September 2, after Prior talked to Farr and the others, he went to the Boswell plant and talked to Lewis T. Robinson, general manager, Gordon L. Hammond, plant manager, and William W. Boswell, a brother of J. G. Boswell and in charge of cattle, etc., for respondent. Prior told Robinson and the others that the Union had filed a charge with the Board and explained the policies of the Union to them. Robinson told Prior that if he were organizing he would endeavor to organize keymen of the plant and not just a few more or less radical, ignorant and casual workers and part-time workers. Prior told Robinson that he would be surprised to know that a number of men that had been steadily on his pay roll were interested in the organization.

24. Robinson, in giving his version of his conversation with Prior, said that he told Prior the company had no objection to any of its men joining any union that they saw fit but that they were faced with a serious unemployment situation; that because of the floods and *cost* control they would not have a run of more than 10,000 bales of cotton and he hoped that Prior would not do anything that would aggravate the situation. Robinson said that Prior agreed to cooperate with them and Robinson further said that he told Mr. Prior that Mr. Gilmore was not even employed by them, and if he were going to try to organize a union he would not try to build it around Gilmore, he would go out in

the plant and get some of the regular men. From Robinson's own statement he brought Gilmore's name into the conversation and said that he had heard that Prior was working with Gilmore who was not then employed by the respondent and had not been since the spring of 1938. In view of Robinson's own admission and the undersigned's observation of both Robinson and Prior the undersigned believes that Prior's version of the conversation is correct. Prior, at the request of the Regional Office at San Francisco withdrew the 8 (1) charge.

25. On or about October 7, 1938, R. K. Martin, H. M. Wingo and George Andrade told Prior that the oil mill was shut down on September 27 and they were informed that Andrade, Martin, Boyd Ely and Farr would not be reemployed at the J. G. Boswell plant. The following day, October 8, 1938, Prior went to the office building of the J. G. Boswell plant and had a conversation with Gordon L. Hammond, regarding the employment status of the above-mentioned men. Prior told Hammond that the oil mills had been shut down and the men laid off and would not be reemployed, because of their activities on behalf of the Union. He explained to Hammond that there might be some misunderstanding because of rumors floating about on both sides. Hammond told Prior that the men in question were not reemployed for the reason that no part of the plant in which they had worked or had experience in was operating, but that had these men

appeared for employment they would have taken them back. Prior left, picked up Martin and drove to the home of Andrade, while there, a brother of Hammond drove up and notified Andrade to report to work that afternoon. On October 11, Prior received notice from Martin that he, Martin, had been recalled to work.

26. Hammond, regarding said conversation, stated that he told Prior it was not true that the respondent did not intend to reemploy the men in question and that as soon as the company had work for them they would be recalled to work.

27. On October 15 a meeting of all of those who had signed application cards for membership in Local 21798 was held at R. K. Martin's residence in Corcoran.

28. On October 26, 1938, O. L. Farr, H. N. Wingo, George J. Andrade, R. K. Martin, L. A. Spear, Peter Galvan and Emanuel Escabedo signed an application for a charter for a local of the Union.

29. The application for a charter was approved by the A. F. of L. and at a meeting on November 5, 1938, at the home of O. L. Farr of Corcoran, the charter of Local 21798 was installed. At the same meeting L. A. (Lonnie) Spear was elected president of Local 21798. O. L. Farr was elected vice president and R. K. Martin, secretary and treasurer. A board of directors was elected and the officers installed.

B. The discriminatory discharges

30. James W. Gilmore first began work with the respondent in July 1928. He worked on and off at different jobs for the respondent until 1936. From 1936 until March 19, 1938, Gilmore worked for the greater part of the time in the oil mill department and his work was steady except for short period of lay offs. Sometimes when the mill shut down Gilmore would be placed at painting or doing other jobs about the factory until the mill reopened. As heretofore stated, in January 1938 Gilmore began talking with a number of the employees in the respondent's plant about the organization of a union. On March 19, 1938, Gilmore was laid off. He was recalled to work by respondent on the 2nd of May and was again laid off on May 17, 1938. Between March 19 and during the period from May 2 to May 17, Gilmore visited the respondent's plant at Corcoran on various occasions and continued to talk to the employees about the organization of a union. About June 1, 1938, during one of Gilmore's visits to the plant to talk to the employees about unions he met Gordon T. Hammond, plant manager, at the south end of the mill. Hammond spoke to Gilmore and Gilmore asked Hammond what he knew. Hammond replied that he knew as much as Gilmore, to which Gilmore replied: "That is practically nothing," to which Hammond said: "I thought you knew quite a bit about threatening to start a union." Gilmore asked him the following question: "Who said anything about

me starting a union?" Hammond said, "Things get around." Hammond then asked Gilmore if he had them all signed up. Gilmore told him that he had about half of the employees signed up and that he would get all of them before he got through. Hammond said, "I think you will if you keep sneaking around." Hammond denied that he had had such a conversation with Gilmore in June, or at any other time. From his observation of the witnesses and considering all of the testimony of Gilmore and Hammond, the undersigned believes the testimony of Gilmore.

31. On the first of July 1938, the mill reopened but Gilmore was not recalled to work. He applied to Julius Hammond, oil mill foreman, and was told he had nothing for him. During the first half of July after the mill had reopened Gilmore met Hammond at the plant between the main office and the scale office. Gilmore asked Hammond if his work had been satisfactory and Hammond agreed that it had been. Gilmore asked Hammond why he had not been put back to work. Hammond told Gilmore that there was no work for him to do. Gilmore asked Hammond if he was not called back to work because of the union. Hammond replied, "I would not exactly say that was it" and said "I have heard you were but I don't believe everything I hear." Hammond denied that he had had such a conversation with Gilmore. Hammond admitted however that he did have a conversation with Gilmore near the mill, but said that the conversation was about

the 17th of May 1938. Hammond, in giving his version of the conversation, which he claimed was in May, said that Gilmore told him that he had a job in Oregon at \$6 a day and that he was going out there and take that job. Gilmore on cross-examination specifically denied that he had made such a statement to Hammond. Gilmore testified he did not have a job in Oregon and that except for a short time during which he visited his brother in Oregon he had been in Corcoran at all times. In fact the undisputed testimony of Gilmore shows that he worked for some time during the summer of 1938 on a new high school building under construction at that time in Corcoran.

32. It will be remembered, as hereinabove stated, Robinson, on September 2, 1938, according to his own admission, brought Gilmore's name into a conversation he was having at that time with Prior. He told Prior that he had heard that Prior was working with Gilmore in attempting to organize the respondent's employees and that Gilmore was not employed by the respondent and had not been since the spring of 1938, and further stated if he were going to try to organize a union he would not try to build it around Gilmore; he would go out in the plant and get some of the regular men.

33. There is no question but that Gilmore's union activity was known in 1938. The conversation with Gordon L. Hammond about June 1 is in point as is the testimony of Lewis T. Robinson.

34. The fact that Gilmore was an employee of long standing—and his turn-down by John Ham-

mond about July 1—puts him in the position of having applied and been refused—and the Robinson statement evidences his status of *persona non grata*, the only thing against him being his union activities—for nothing else was shown.

35. The undersigned finds that Gilmore was not laid off on March 19 or May 17, 1938, because of his union activities, but does find that Gilmore was refused reinstatement to his former position with the respondent on July 1, 1938 when the oil mill reopened, because of his union activities.

36. In the latter part of August 1938, during a conversation between Gordon L. Hammond⁴ and O. L. Farr, an employee of respondent and a member of Local No. 21798, which took place in Mr. Hammond's office, Hammond asked Farr if he were a member of the Union and said that he heard that he was such a member and was carrying a receipt book on the job, signing up members and was active in union affairs. Farr denied to him that such was a fact. Hammond said, "Well, you can hear most anything. I just wanted to know" and asked Farr if he was satisfied with his working conditions. Farr told Hammond he was not satisfied to work 84 hours a week.

37. Hammond, while on the witness stand, admitted that he did have such a conversation with Farr in August or the first part of September 1938, but in giving his version of the conversation with

⁴Above described as plant manager for the respondent, Boswell Company.

Farr said that he told Farr one Andrew Galvan, a Mexican employed by the respondent, told him that Farr had asked him (Galvan) and Ignacio Galvan to sign a paper which Farr said came from the office; that if they would sign said paper they could not be laid off, and that they would get more money. Hammond denied that during said conversation anything was said to Farr regarding working conditions. The undersigned believes the testimony of Farr.

38. In the month of September 1938, during a conversation between O. L. Farr and Tom Hammond, foreman of the gin mill, which took place between the seed house and oil mill, Hammond asked Farr if he were a member of the Union. Farr told Hammond that he was and Hammond asked Farr for the names of the other members of Local 21798. Farr told Hammond that he did not give out that information and that union activities were not discussed on the job. Hammond told Farr that if he wanted to belong to the Union, he, Farr, should go where there was a union; and that the company did not want a union there. Farr's testimony regarding his conversation in September with Hammond was not denied.

39. Just before the oil mill shut down in September 1938, Joe Hammond⁵ came to where Farr

⁵Joe Hammond, foreman of the oil mill who told the men what to do while at work and told them when they were laid off in slack periods and when to return to work and is therefore a supervisory employee.

was working in the linter room of the oil mill and entered into a conversation with Farr. The conversation by questions and answers is as follows:

Q. (By Mr. Mouritsen) Now, returning to the conversation, will you state the conversation that you had with Joe Hammond?

A. Joe came and he asked me—he said, “What are you and Martin going to do when the mill shuts down?”

And Farr said

“I guess I will work in the gins as I always have.”

He said, “I can’t use you any longer in the mill.”

And Farr said, “Well, since when,” and he says, “from now on when the mill shuts down.”

And Farr said, “I always have worked.”

He said, “But you never belonged to the union before this time.”

Farr’s testimony was not denied.

40. On the 24th or 25th of September 1938, during a conversation in the expeller room of the respondent’s plant between R. K. Martin, an employee of the respondent and a member of Local 21798 and Tom Hammond, Martin asked Hammond if he had told anybody that he (Martin) was going to organize the respondent’s plant. Hammond told Martin that he had heard that statement but would not disclose to Martin who had given such information. Martin told Hammond that he had not figured on organizing the plant but believed that it

could be done. According to Martin, Hammond said, "Well, if the union comes in here, we will clean it up and lock it up and shut the plant," and that "Gordon Hammond has a letter from J. G. Boswell stating that if the union did come to lock up the plant" and further that "He did not blame anyone for refusing to have anything to do with any organization that Gilmore was interested in." Gordon L. Hammond denied he received such a letter from J. G. Boswell.

41. During a conversation in the seed house of respondent's plant during working hours on the 6th or 7th of November between Steven Griffin, a member of Local 21798, and Tom Hammond in the presence of Jack Ely and Ray Fallon, employees of the respondent, Tom Hammond asked Griffin if he had joined the Union. Griffin told him that he did join the Union. Hammond asked Griffin, if he did not think that the work with the company were good enough for him. Griffin said that it was good enough for Hammond but not for a man working at ordinary wages. Such a man could not make a living at it. Hammond said, "This union is the worst thing that ever has been here," and advised Griffin to stay out of it.

42. The respondent, even though Tom and George Hammond were still employed by respondent at the time of the hearing, did not produce as witnesses either Joe or Tom Hammond to deny conversations alleged to have taken place between them and O. L. Farr, R. K. Martin and Steven J.

Griffin. Neither did respondent produce Kelley Hammond, Julius Hammond, Yankee Roberson or Bill Robinson to deny conversations had with some of the employees regarding union matters. The respondent, in lieu thereof, called Lewis T. Robinson, general manager, and Gordon L. Hammond, plant manager, to testify that the above-named individuals were not given the title of foreman and could not speak for the company.⁶

43. There is no magic in the title of foreman or the duties he performs. The fact that the respondent contends the title of foreman has not been given to Tom, Joe, Julius and Kelley Hammond, Yankee Roberson and Bill Robinson and that they are not authorized to speak for the company is not conclusive. The nature of their work as associated with other employees within their respective departments is a determining factor of their status. They are paid on a monthly basis at a higher rate of pay while the employees within their respective departments work on an hourly basis. The employees take their working instructions from Tom, Joe, Julius and Kelley Hammond, Yankee Roberson and Bill Robinson. They tell employees when they are laid off in slack periods, when to return to work, and generally supervise the employees during working periods. They are, in fact, as far as the employees are concerned, the bosses of their respective departments and are, therefore, responsible super-

⁶The Serrick Corporation, Case No. 7258, District of Columbia.

visory employees of the respondent, and the undersigned so finds.

44. L. E. Ely began his employment with the respondent in either September or October 1936 on the hay cutter at 30 cents an hour. He was laid off after working about 2 months and returned to work around the gins in September 1937 at 35 cents per hour. He was laid off and returned to work in November 1937 as press helper on gin No. 4 at 35 cents an hour. He worked on and off until October 1938 at which time he went back in as a press helper. Joe Briley, press manager or head pressman, was taken ill and Ely was put in his job as head pressman at 40 cents an hour. On November 11, 1938, Ely joined Local 21798. Ely continued as head pressman for about 7 days, at which time Briley returned to his work. Ely was returned to his job as press helper and reduced from 40 to 35 cents an hour. On Saturday when Ely received his pay check and noticed that he was receiving 35 cents instead of 40 cents an hour he asked Tom Hammond if he knew "Why his rate of pay was changed from 40 to 35 cents per hour." Hammond told him that he did not know but at the request of Ely he said he would try to find out and Hammond stated that maybe the union had something to do with it and then said, "Maybe you should get your committee together and go up to the office and see if they could not find out something about it." At the time Hammond left Ely, Hammond said, "Well, I will see about why your

wages was cut, and let you know." Ely's testimony was not denied. On November 5, 1938, Ely received an injury to his thumb while cutting cotton at the press. He continued to work and by November 9 infection in the thumb had set in. He visited Dr. Edmonds' office in Corcoran and again on November 16 went to the doctor's office. On the visit of November 16th to the doctor's office the doctor asked him if he were still working. Ely told the doctor that he was working, whereupon the doctor told him to go home and not to work any more until he was released by him. On the morning of the 16th of November Ely reported to Tom Hammond and explained his injury and his doctor's instructions. Hammond told Ely to go home. Ely has not been recalled to his work by the respondent even though he has fully recovered from his injury. The respondent stated that Ely was not recalled to work because of slack periods, but on cross-examination admitted that the usual practice of respondent in cases of lay-offs has been, and was at the time of the hearing, that the individual employees laid off would be advised before they left the plant that they would be notified when needed. Ely was never notified to return to work.

45. On November 28, 1938, the respondent, through its general manager, Lewis T. Robinson, sent a registered letter to L. E. Ely advising him that gin No. 4, upon which Ely worked, was closed down on November 26 at 5 p. m. and that his employment by the company was terminated at that

time. It was not the practice to lay off an individual and later send him a registered letter informing him that his employment was terminated. In fact never before, had such a letter been sent out to a laid-off employee. The only explanation the respondent gave for sending the registered letter to Ely was that, he was not there at the plant to receive notice in person. The undersigned finds that at the time Ely temporarily took over the job as head presser he was increased to 40 cents an hour, and that when the head presser returned Ely was sent back to his former job as press helper and reduced to 35 cents per hour; that he only received the 40 cents per hour during the time he acted as head pressman for the reason that the job in question was rated at 40 cents per hour; that the reduction to 35 cents per hour was in the normal course of respondent's business, and therefore Ely's reduction from 40 cents to 35 cents an hour was not because of union activities. However the undersigned finds that Ely's discharge became effective on November 26, 1938, and that he was refused re-employment by respondent because of his membership and union activities in Local 21798.

46. Walter Winslow, a member of Local No. 21798, first began his employment with the respondent in September 1935 as a hay cutter at 30 cents an hour. He worked at various jobs such as in the cattle corrals, seed house, oil mill, warehouse and outside work. In 1938 his hourly rate of pay was increased to 40 cents an hour. He worked on and

off at various times and in fact was off from work in September 1938, at which time he was recalled at the beginning of the September 1938 ginning season and put to work feeding suction. After about 3 weeks, which included a short lay-off, he started working in the oil mill chasing lint. About November 13 Tom Hammond came back to the lint room where Winslow was standing by the scales and asked Winslow whether or not he had joined the Union. Winslow told him that he had and Hammond asked, "Have those other boys over here that is working with you joined?" Winslow told him that he did not know. The men referred to by Hammond were Dick White, W. E. Williams, and Miller Butcher.

47. On November 15, 1938, Tom Hammond, previously described as the foreman of the gin department, came to Winslow during working hours and said, "It looks like the mill is going to have to shut down on account of the boys joining the union." A little later in the afternoon Hammond came back to Winslow and in the presence of another employee by the name of Williams, talked to Winslow and during the course of the conversation Hammond said, "We are shutting the mill down tonight at 6 o'clock on account of the union. Where are you going to place your card at any other place but here?" Winslow said that he told Hammond that he thought he could and Hammond said, "We can't use you here at this plant and no place else."

48. About 5 o'clock that night Joe Hammond

came to Winslow and in the presence of Dick White, W. E. Williams and Tom Donahue said, "Well, I am sorry but we are going to shut the mill down." Winslow's testimony was not denied.

49. Boyd L. Ely, a member of Local No. 21798, was first employed by the respondent between the 22nd and 24th of July 1937 as a hay cutter at 35 cents an hour. He worked on and off for the company at various jobs until November 15, 1938, at which time he was laid off. His rate of pay per hour had been increased from 35 to 45 cents.

50. In July 1938, Ely, while at work, made a remark to his fellow employees by the name of Butcher and White that he was going to go to a union meeting that night and that he intended to join the Union. The next morning when he came to work about 6 o'clock Tom Hammond saw him coming to work and went over to where Ely was stationed. He asked Ely if he had joined the Union last night. Ely told him that he did not and according to Ely, Hammond said, "It was no good bunch trying to run somebody else business."

51. In October 1938, Ely had a conversation with Clyde Sitton, nephew of Gordon L. Hammond, plant manager, and during that conversation something was said about the Union. Sitton said he believed the Union was all right but it would never work down there, that if the Union came they had orders to shut the place down, lock the gates and let it lay.

shift and when he went to work that night the mill was shut. He asked Joe Hammond, who was in charge on that shift, why the mill was closed. Hammond said that he did not know why the mill was shut down. Neither Sitton nor Hammond were produced as witnesses to deny Ely's version of the conversation in question.

53. The respondent contends that the mill was shut down and that Winslow and Ely were laid off because of lack of work. That contention does not seem to be well founded in that Board Exhibit 3, part of which was read into the record and withdrawn, shows that Douglas Cafall was first employed by the respondent on September 26, 1938, and worked through until the week ending December 31, 1938. He was again employed during the week ending February 2, 1939, and also worked the full week ending May 6, 1939, and for each of the weeks ending February 2 and May 6 he received the sum of \$75; that Al Chestnut was first employed by respondent on December 23, 1938, and worked until February 23, 1939; that Andrew Clark was first employed by respondent on January 8, 1939, and worked part time until February 3, 1939; that Joseph Melton was first employed on October 1, 1938. The record further shows that other new employees were taken on by the respondent during the last half of the year 1938 and the first half of 1939. While the above-named men in some instances were not doing the same type of work as was done by Boyd L. Ely and Walter Winslow,

there was no proof that Ely and Winslow could not have done the type of work performed by the new employees. On the contrary there was evidence that Ely and Winslow had worked in many jobs and it can be fairly inferred that they could have been retained by respondent doing the work in question instead of the new employees. Therefore, the undersigned finds that Boyd L. Ely was locked out of his employment by respondent on the night of November 14 and Walter Winslow was locked out of his employment on November 15 because of their membership and activities in Local 21798.

54. Steven J. Griffin first began his employment with the respondent, Boswell Company, in August 1932. He worked on and off at various jobs until May 1936 at which time he bought a hay baler. Griffin baled hay for the respondent, Boswell Company, during the seasons of 1936-1937 and 1938. In August of 1938 he returned to work for the Boswell Company at 40 cents per hour. He worked about 22 hours the week ending August 11 and then was laid off until the week ending October 13, from which time he worked continuously until his lay-off on November 17. Griffin joined Local No. 21798 on the 15th or 16th of November 1938 while attending a meeting of said local. During the afternoon of November 17, 1938, Tom Hammond went to the cotton gin where Griffin was sewing sacks and asked Griffin in the presence of Paul Morris and Horace Hastings if he had joined the Union. Griffin told Hammond that he had been a member for about 2

weeks. Hammond walked directly to the back of the warehouse and met Gordon T. Hammond where they stood and talked for 15 or 20 minutes.

55. A few minutes after Tom Hammond had talked with Gordon L. Hammond he (Gordon L. Hammond) came to Griffin and said "Steve" he said "Can you find work in any place else?" Griffin said, "I don't know" and said "You know how times is. I don't suppose I could" and said "If I am laid off I suppose I will have to try." Hammond said, "I know you have got as big a family as anybody around here. You probably need the work as bad or worse than anybody around here, but I just haven't got any work for you" and said "some of the boys has got it in their head that you boys are being laid off on account of the union but" he said "there is nothing to that. I am just going to lay you off." Griffin has not been recalled to work by the respondent since November 17, 1938.

56. W. R. Johnston was first employed by the respondent, Boswell Company, in September 1937 as a bale hauler at 35 cents an hour. He continued to work as a bale hauler until January 28, 1938, at which time he injured his leg and was off until about the 20th of October 1938, at which time he was re-employed as a press helper on No. 4 gin and continued to work as a helper and on other jobs until the night of November 17, 1938.

57. On November 7, 1938, Johnston joined Local No. 21798 and attended the meeting of said local on November 16, 1938. During the day November 17,

1938, Gordon Hammond told Johnston that he was laid off on account of the weather and the shortage of the cotton crop, and according to Johnston, then said, "I hate to lay you off but then someone had to go and it is just as well to be you as anyone else and that I wasn't laid off on account of the union activity" and said "some of them thought it was, but it wasn't."

58. Hammond did not deny the testimony of Griffin but stated that Griffin and Johnston were doing the same kind of work all along and that he had notified both Griffin and Johnston on the morning of November 17, 1938, that there would be no more work after that day for a few weeks.

59. Hammond further stated that neither Johnston or Griffin had returned and asked for reemployment. In this connection the evidence clearly shows that it has been, and was at the time of the hearing, the policy of the company to notify men when they were to return to work and even if it were true that Hammond told Johnston and Griffin on the morning of the 17th that there would not be any work for them for a few days, he has never notified Griffin or Johnston to return to work at the Boswell plant. The undersigned finds that Griffin and Johnston were laid off on November 17, 1938, because of their union activities and membership in Local No. 21798.

60. O. L. Farr began his employment with respondent in September 1936 as a ginner in the ginning department at 45 cents an hour. He continued to work on and off as a ginner and at other jobs until

January 1938, at which time he was transferred to the oil mill department and worked continuously through 1938, except for a 2 weeks' vacation. In November 1937 Farr's hourly rate was increased from 45 to 50 cents per hour. His last period of employment began on October 15, 1938, as a ginner, at which job he continued to work until November 18, 1938. Farr joined Local 21798 on September 2, 1938, and he, together with Gilmore, Lonnie Spear, R. K. Martin, George Andrade and H. H. Wingo, constituted the nucleus around which Prior attempted to organize the employees of the respondent's plant.

61. On the morning of November 17, 1938, Farr, vice president of Local 21798; R. K. Martin, secretary-treasurer of said local, employees of the respondent; and Prior, the organizer, met as a committee representing Local 21798 with Gordon L. Hammond at the Boswell offices for the purpose of discussing the reduction of working hours in slack periods so that all of the employees would get some of the work during such periods. At 1 o'clock that same day Tom Hammond went to the gin upon which Farr was working and asked Farr if they had been trying to "contradict" him in his job. Tom Hammond referred to the meeting of the Union with Gordon L. Hammond of that morning. Farr told Hammond that they were not attempting to get his job and Hammond said that if he was wrong he was sorry, but he said, "We are going to straighten this out tomorrow." Farr's testimony regarding his conversation with Tom Hammond was not denied.

62. At about 10 o'clock on the morning of November 18, 1938, Bill Robinson⁷ told Farr to shut down his gin for a little meeting outside the plant. Robinson helped Farr shut down the machinery. Farr asked Robinson why the mill was being shut down or words to that effect. Robinson said, "They will tell you about it outside. It is about the union." Robinson walked upstairs and Farr went out the side door of the gin. Farr stated that when he got outside the gin there were approximately 60 men gathered there on the Boswell property. For the most part the alleged group of men were employees of the respondent but Farr stated there were some farmers and cowboys or boys dressed as cowboys in the group.

63. Farr said that Jack Ely, an employee of the respondent, walked up to him and said, "I want to know about your damn union." Farr said, "Well what about the union, Jack?" and Ely said "The company doesn't want your union here" and said "I don't see why you fellows should turn against the company you are working for." Farr said, "Well we don't—this is somebody else meeting, this is not our meeting and we don't discuss our union activities on the job." Someone in the crowd asked, "Who

⁷Robinson is a mechanic in the gin department. He repairs the gins, tells the operator when to shut the gin down for repairs and returns lint to the operator when it is shown that the gin is not cleaning the lint properly and generally directs the operation of the gins as to proper cleaning, etc. The undersigned finds that he is a straw boss and as such is a supervisory employee of the respondent.

is the president of the union?" Farr told the crowd that Lonnie Spear is the president of Local No. 21798. The crowd gathered around Spear who told them that the union was only trying to make the working conditions for everybody better; that the talk had been of some lay-offs and that they wanted shorter hours for that reason; that everybody should work and get their share of the work. Some unidentified person in the crowd shouted, "Let us throw them out. The company is behind us." Farr testified that John Duncan, Wallace Tisdale and Stan Salisbury took hold of Spear, one on each arm and the third behind his back and by pulling and pushing forced Spear across the public highway from the plant into the office of the superintendent of the Boswell Company. The term "superintendent" is another description given to the plant manager, Gordon L. Hammond. While dragging and pushing Spear into the office they tore Spear's shirt. A number of the individuals who had gathered outside the plant followed the three men and Spear into the office and Farr was among them. Farr identified (Yankee) Roberson as being among those who were in the office of Gordon L. Hammond. Hammond had left that morning about 8:30 for Los Angeles, California, and was therefore not in the office. An unidentified individual called to Louis T. Robinson, general manager, and demanded that he pay the union men off and discharge them. Robinson came to the door of his office and said "You men go back and start your machinery. I will be right out in a short while and straighten this out."

64. The employees, including members of Local No. 21798, left the office and started back to their jobs. Farr stated that he started his machine in operation and Spear started the electric motor on his gin. As Farr and Spear started their machinery Kelly Hammond and Burdine Mitchell, employees of the respondent, and Joe Hammond, who has heretofore been described as a foreman, came in the front door of the gin. Kelly shut off the air blast fan of Farr's gin. This forced Farr to quit feeding the overflow. Robinson came in and shut some more machinery off. Farr stopped working. He asked Robinson what to do about it, and he said, "I have nothing to do about it." Tom Hammond walked in and Farr said, "Tom, what do you want me to do? Do you want me to run this machinery under these conditions?" Hammond did not answer but turned and walked out. Farr asked Robinson what he should do about running the machinery. Robinson said, "There don't seem to be enough of you union men to run it" and said "I should say you should go home. That would be my advice."

65. Bill Robinson is and was at the time of the hearing a mechanic in charge of keeping the gins in condition as well as giving orders to the gin operators with respect to seed operations. When the gin was not properly working Robinson brought the seed back and told the gin operators to make certain changes to produce the proper effect upon the ginning of the cotton and on various occasions would have the operators stop the gins for repairs. The

undisputed testimony of Farr was that Robinson gave him orders during the 1937-38 and 1938-39 seasons.

66. R. K. Martin, who was present at the meeting at the plant on November 18 and who accompanied the men who forced Spear into Hammond's office, stated that Rube Lloyd, Yankee Roberson and Oscar W. Busby were among the group who went into Hammond's office at the time Spear was dragged in there by the individuals above named. Rube Lloyd is the head carpenter in the carpenter shop and described by Robinson, general manager, as being in charge of a group of men while at work and Oscar W. Busby as a head mechanic in the machine shop who receives his orders from Gordon L. Hammond and transmits such orders to the men who work in his department. The undersigned finds that Busby is a supervisory employee of respondent. Martin's testimony was not denied.

67. On the morning of November 18, Lonnie Spear, who worked on the 10 a. m. shift, came to work a little early for the purpose of cleaning the machinery and getting ready for the day's work. He told Todd, an engineer, to start the engine. Todd said that he was told not to start the engines, that they were going to have a meeting out there and pointed towards the warehouse. The remainder of Spear's testimony regarding the incidents which took place on the morning of the 18th is practically the same as above described by O. L. Farr. Todd, even though working at the plant during the hearing, was not produced to deny Spear's testimony.

68. After Robinson had told the men to go back to work and that he would come down later and straighten the matter out, and after the above-described individuals had forced Spear, Farr and others to shut down their machinery and told them to go home, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. M. Wingo, all employees of the respondent and active members of Local No. 21798, waited around for a while for Robinson to come down and straighten the matter out. Robinson failed to appear and they left the plant and went home. Between 11 and 12 o'clock of November 18, O. L. Farr called Louis T. Robinson and asked him what the company was going to do about the union men being forced off the job that morning. Robinson told Farr that he would think the matter over and that he should call later.

69. Robinson admitted the telephone conversation with Farr but claimed Farr, as directed, did not call him again regarding the matter. Robinson admitted, on cross-examination, that even though, on the morning of November 18, he promised the employees, at the time he told them to return to their work, that he would come down later and straighten the matter out, did not keep his promise with the evicted union members.

70. At 6:30 in the evening of November 1938, Farr and Martin met Prior at Bakersfield, California, near the Greyhound Bus Terminal, and told Prior that the union employees had been evicted from the plant by foremen and non-union men em-

ployed by the respondent that morning about 10 o'clock. Prior called Robinson at his home that same evening and told Robinson about the information he had received from Martin and Farr. Robinson told Prior that the employees were going to have a meeting that night and that he would wait until he had a report from them before he did or said anything. Prior told Robinson that these men who had been evicted were members of Local No. 21798 and that if the company wanted to make a fight over the matter that the Union would not back down. Robinson stated that he did not know what Prior was talking about. Robinson, in giving his version of the telephone conversation in question, said that Prior stated, after informing him that he had heard of the events of that morning, that he wanted to come up and help straighten the matter out. Robinson said, "I told Prior that I felt we were fully capable of straightening it out ourselves" and that Prior said, "That *is* would have to be straightened out, and that whatever steps necessary to straighten it out would be taken" and Robinson said he told him "If he thought that was a threat he was wasting his breath" and hung up.

71. On the morning of November 19, 1938, Martin, Spear and Prior met Gordon L. Hammond and Louis T. Robinson at the offices of the respondent's plant in Corcoran. At that meeting the whole matter of November 18 was discussed and Robinson stated that the employees acted (in the eviction incident) and there was nothing he could do about it other

than Gordon L. Hammond would feel out the sentiment of the employees about union men returning to work. Prior asked Robinson how long it would be before he could give him an answer. Prior told Robinson that the matter was very serious and more so than the management or employees realized and that he would like an answer not later than 12 o'clock that day. The conference ended. Robinson, in giving his version of the meeting with Prior and others on the morning of the 19th, stated that he told Prior that the men could go back to work at any time and Prior said that they would have to have a special protection to go back to work. Robinson, so he claimed, told Prior that the men did not need any special protection and that therefore the company would not furnish such, but that they could go back to work. He then said to Prior and the men present, that they should go and talk to the boys themselves and said, "I think they would find everything was all right" and said that he told Gordon L. Hammond to feel out the sentiment of those men and see if he felt they needed special protection. Robinson said that Prior asked him if he were talking for the head of the office and Robinson claimed he replied that the head office had come to no decision except that the men could go back to work at any time; that if they did not go back to work they would get the pay anyway until the head office came to a determination of the whole matter. Robinson did not call Prior before 12 o'clock that day or at any other time during the day. Local 21798, having failed to receive any com-

munication from Robinson regarding the eviction from the plant of its union members, decided to and did, on November 18, 1938, vote to place a boycott against the company and its products.

72. On November 25 Prior called at the J. G. Boswell office on Spring Street, Los Angeles, California, to discuss the matter with J. G. Boswell, president of the respondent company. Prior explained to Boswell and an unidentified person who was there present, the incidents of November 18 at the Corcoran plant and the taking of the boycott vote. Boswell told Prior that if the organization boycotted their products by use of goon squad attacks that the company would probably have to affiliate with some organization for its protection and that as far as the trouble at Corcoran was concerned, the local management was competent to handle it and that it was in their hands. The conference between Boswell and Prior broke up without further discussion. The conversation between J. G. Boswell and Prior was not denied by the respondent.

73. About November 25, Prior and Spear called on Gordon L. Hammond at the Boswell plant in Corcoran and asked for a meeting with Hammond and Robinson about taking the union men back to work. Robinson was out. Prior asked Hammond to arrange for a meeting between the union committee, Hammond, and Robinson for the next day. The meeting was arranged and held the following day. Martin and Prior represented Local No. 21798 and Louis T. Robinson represented the respondent company. Robinson wanted to know who the men were

that Local 21798 wanted taken back to work and said that there had been times between November 18 and the date of the conference that they did have work for the men and that they could use Spear. He asked who was next. Prior named R. K. Martin. Robinson laid his pencil on the desk and said, "Well, Mr. Martin's machine is shut down and we can't use Mr. Martin. We might at sometime in the future but we don't have any idea when." Prior told Robinson that if that was the attitude of the company regarding Martin there was no need of naming any others. In substance Robinson admitted the testimony of Prior regarding the meeting of November 26 but claimed that that meeting took place on November 28.

74. Gordon L. Hammond, in giving his version of the meeting of November 19 and the meeting of November 26, which he claims was on the 28th, stated that he told Prior that the respondent would take back all of the union men and coupled with Hammond's version of the conversation Robinson likewise stated, at the meeting of November 26 or 28, that he told Prior that the respondent would take back all of the union men except Martin and that Martin would probably be taken back at a later date. Prior claims that the meeting was held on the 26th of November. If Hammond's and Robinson's version is correct as to the date of the second meeting, that is being November 28, it is indeed strange that on that same day, November 28, Robinson wrote and mailed registered letters⁸ to R. K. Martin, L. E. Ely

⁸Board Exhibits Nos. 14, 15, 16, 17.

and George Andrade advising each of them that their employment with the respondent terminated on November 26 at 5 p. m. Robinson, when examined by his own counsel, did not remember whether the letters in question were written before or right after the conference with Prior regarding the reemployment of the union men. It is immaterial whether or not the letters were written before or after the conference with the committee of Local 21798 on November 26 or 28, for the reason that on November 19, Hammond and Robinson both advised Prior and his committee that the union men would be taken back to work, and on November 28, Robinson also advised Prior and his committee that the union men would be taken back to work. Therefore, in either event, both Hammond and Robinson were deceitfully misadvising Prior and his committee regarding the status of members of Local 21798, and it is evident from the registered letters sent out on the 28th that the company had no intention of taking the members of Local 21798 back in its employment. The letters show conclusively that the said members of the said Local had been definitely discharged from their employment with respondent November 28, 1938. On December 6, 1938, similar registered letters were sent out to O. L. Farr, L. A. Spear and H. M. Wingo.

75. On January 18, 1939, Prior had a further conference with Louis T. Robinson, at which time Prior asked Robinson if he had changed his opinion about taking union employees back to work. Robinson stated that he had not changed his opinion. That

was the last conference Prior had with the officials of respondent company.

76. From the above-stated facts and from the whole record, the undersigned finds that George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo were evicted from the respondent's plant on the morning of November 18, 1938, by the respondent, and refused reemployment by it for the reason said employees joined and assisted Local 21798, and engaged in concerted activities with other employees for their mutual aid and protection.

77. Evan C. Powell (E. C. Powell), a member of Local 21798, first began his employment with respondent in August 1936 as a general workman at the rate of 35 cents per hour. In September 1936 he was transferred to a cotton press tying cotton for a few days and was again transferred to an engineering job, which consisted of running the engines for the smaller gins, and later was put in charge of the main engine plant. On September 27, 1937, Powell was injured and did not return to work until November or December 1937, at which time he went back on the gins.

78. On the morning of November 18, 1938, shortly after the union men, hereinbefore referred to, were forced out of their employment as before described, Bill Robinson told Powell to go over and take No. 4 press, which formerly was operated by Joe Briley. Powell refused to take the job because it was the job performed by Briley, who had been

evicted, and told Tom Hammond that if he took such a job he would be scabbing on the Union. Hammond told Powell to go over and take No. 1 press, which had been operated by Wingo. Powell refused because Wingo had also been evicted from said job. At about that time Bill Robinson appeared on the scene and talked to Powell. During that conversation Robinson said according to Powell "I'd better throw that God damned button down before the men found out I had it on and scatter up the ground." The button referred to was a union button which Powell was wearing for the first time. Powell left the plant and went to the home of O. L. Farr. The testimony of Powell regarding the conversations with Hammond and Robinson were not denied.

79. About the 20th of November Clyde Sitton, a nephew of Gordon L. Hammond, went to Powell's home and told Powell that Gordon L. Hammond wanted to see him at the office. On or about the 25th of November 1938 Powell did see Hammond, who told Powell that he did not have anything against him and that he could return to work. Powell told Hammond that he would be afraid to go back to work after what happened to the other members of the Union. Hammond advised Powell that he would tell the employees to lay off and they would do so and that therefore there was no reason for him to worry. Powell under the circumstances refused to return to work. Hammond said "After I find out it was all hooey that a bunch of fellows claiming something they couldn't back up, I would come back

and if there was anything there, he would give it to me." Hammond never notified Powell to return to work.

80. On November 28, Powell received a registered letter advising him that his employment with respondent terminated on November 28 at 5 p. m. The undersigned finds that Powell was discharged by respondent on November 28, 1938, because of his union activities and membership in Local No. 21798.

81. Eugene Clark Ely, a member of Local 21798, began his employment with the respondent in September 1937 as an electrician's helper at 35 cents per hour. Later he worked as a watchman in the cotton yard and was transferred to the oil mill as a cleaner. He worked on and off at various jobs until January 30, 1939. On Saturday preceding Monday, January 30, Ely did not work. On the previous Saturday Ely told Rube Lloyd, head carpenter, who has supervision over the other men in that department, that he had hurt his shoulder the day before and did not feel like working that day. Lloyd told him that it was raining and there would not be much doing anyhow and that it was perfectly all right for him to be off but told him to report to work Monday, January 30. On Sunday, January 29, Ely went to a union meeting at Bakersfield with R. K. Martin, E. L. Ely and W. R. Johnson. While at Bakersfield attending the meeting Prior, E. L. Ely, W. R. Johnston, R. K. Martin, Eugene Clark Ely, and several other fellows were standing out in front of the Teamsters Hall in Bakersfield. While they were standing there W. W.

Boswell⁹ went by the hall driving at a rate of about 15 miles an hour and looked toward the men in front of the hall. On the front of the hall is a sign "Teamsters Hall, Local No. 87."

82. On Monday morning, January 30, when Ely returned to work about 6:30 in the morning Rube Lloyd, foreman of the carpenter department, met Ely in the yard. Ely asked Lloyd what he would do that day. Lloyd said, "There is nothing else to do. We are all through." About 30 minutes later Ely had a conversation with Gordon L. Hammond in the office of the Boswell plant. Ely told Hammond that Lloyd had laid him off that morning. Hammond said, "Well, I don't know. There might be some work to do later on." Ely went home. He has never been recalled to work by the respondent.

83. W. W. Boswell denied that he saw Eugene Clark Ely and the other men in front of the Teamsters Hall in Bakersfield. He denied that he had knowledge of the fact that such a hall existed in Bakersfield. The undersigned believes the testimony of Ely and finds that Ely was discharged on January 30, 1939, because of his membership in Local 21798 and because of his union activities.

84. The undersigned finds that Eugene Clark Ely was discharged on January 30 and from then on was refused reemployment by respondent because said

⁹W. W. Boswell is the brother of J. G. Boswell, president of the respondent and has charge of the cattle, meal and grain for respondent and is a supervisory employee of the respondent.

employee joined and assisted Local No. 21798 and engaged in concerted activities with other employees for their mutual aid and protection.

85. James W. Gilmore was refused reemployment by the respondent on July 1, 1938; L. E. Ely was discharged on November 26, 1938; Boyd Ely was locked out of his employment on November 14, 1938, and Walter Winslow was locked out of his employment on November 15, 1938; W. R. Johnston and Steven Griffin were discharged by respondent on November 17, 1938; respondent's employees and supervisory employees, with the full knowledge and consent of the respondent, by means of force and threats of violence, did, on November 18, 1938, evict George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo from their work. However, respondent produced evidence during the hearing to show that the weekly wages of the above-named evicted employees were paid until respondent sent each of them a registered letter advising them that their services were discontinued. Andrade's registered letter was written on November 28 advising him of discontinuance of his services from November 26. The same set of facts regarding the registered letter applies to R. K. Martin. On December 6, respondent sent a registered letter to O. L. Farr advising him that his services were discontinued on December 3. Respondent wrote and mailed a registered letter on December 6 to L. A. Spear advising him that his services were discontinued on December 5. Respondent sent a similar

letter to H. N. Wingo on December 6 advising him his services were discontinued on December 3. The said evicted employees testified that they were not sure that the checks they received after November 18 were payments in full for the wages they would have earned had they worked. In view of all of the circumstances surrounding the eviction of said employees on November 18, 1938, the undersigned finds that said evicted employees were actually discharged on November 18, 1938, and that respondent should be given credit for any monies paid to said employees between November 18, 1938 and the dates of the registered letters. On November 18, 1938, E. C. Powell left the employment of respondent for good and sufficient cause, as heretofore discussed, and on November 28 respondent sent Powell a registered letter advising him that his services were discontinued on November 26, 1938, and on January 30, 1939 respondent did discharge Eugene Clark Ely, all for the reason that he together with the said James W. Gilmore, L. E. Ely, Boyd Ely, Walter Winslow, W. R. Johnson, Steven Griffin, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear and H. N. Wingo joined and assisted a labor organization known as the Cotton Producers and Grain Mill Workers, Local 21798, A. F. of L., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

86. By the refusal to reemploy James W. Gilmore on July 1, 1938; by the discharge of L. E. Ely on

November 26, 1938; by the lock out of Boyd Ely and Walter Winslow on November 15, 1938; by the discharge of W. R. Johnson and Steven Griffin on November 17, 1938; by the eviction by force and violence and threats of violence of George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear and H. N. Wingo on November 18, 1938; the discharge of E. C. Powell on November 26, 1938 and the discharge of Eugene Clark Ely on January 30, 1939, and refusal of reemployment to each of them, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

87. By said refusal to reemploy James W. Gilmore, and by the lock out of Boyd Ely and Walter Winslow on November 14 and 15; by the discharge of W. R. Johnson and Steven Griffin on November 17, 1938; by the eviction by use of force and violence and threats of violence of George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear, and H. N. Wingo on November 18, 1938; by the discharge of E. C. Powell on November 28, 1938, and the discharge of Eugene Clark Ely on January 30, 1939; and by the refusal of respondent to reemploy any of the said employees at any time thereafter, except Joe Briley, respondent has discouraged membership in a labor organization known as Cotton Producers and Grain Mill Workers Union, Local No. 21798, A. F. of L., in violation of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

88. By the activities above set forth in Section IV, A and B, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 and Section 8 (1) of the Act.

89. Elmer Eller, who was alleged to have been discharged on November 17, 1938, because of his union activity, did not appear as a witness during the hearing for the reason, as the undersigned learned, that he had a job in Georgia and did not wish to urge his claim. Therefore, the undersigned recommends that the complaint as to Elmer Eller be dismissed.

90. Joe Briley was recalled to work a few days after November 18, 1938, therefore it is recommended that the complaint as to Joe Briley be dismissed.

The Independent Union

91. Louis T. Robinson, general manager of the J. G. Boswell Company's plant at Corcoran, admitted that a few minutes after the meeting and disturbance that occurred about 10 o'clock on the morning of November 18, hereinabove fully set forth, Rube Lloyd, an expert carpenter and construction man, who at times is in charge of three or four men, Clyde Sitton, nephew of Gordon L. Hammond, and an unidentified third person came to his (Robinson's) office and advised him that a number of respondent's employees had decided to organize a company union. The committee of three requested advice from Robinson as to what they should do. Robinson testified "I told them that I was not in a position to advise

them, and that they would have to seek other advice." The committee left and went to the office of the district attorney of Kings County seeking information as to the formation of an independent union.

92. District Attorney Walsh, a witness appearing on behalf of Boswell Company, in relating the conversation of the visit of the committee of the independent union to his office, stated that the gentlemen, four or five in number, asked him what he knew about the Wagner Act and the possibility of the local employees forming an employees union at the Boswell plant. Walsh told the committee that any organization could form their own employees union and if a majority so desired, could select their own bargaining agency. The committee asked Walsh if he would represent them in the organization of a union. He refused but did tell them that the employees of the Lucerne Creamery and the Caminol Companies of Kings County had organized their own independent union. Walsh advised the committee that Clark Lament of Lemcore had formed those two independent unions and that he would be a good attorney for them to see. Walsh called the Caminol Company and talked to the chief bookkeeper who told him that he would talk with some of the boys and when the committee of the Boswell Company came down that they would be glad to give the committee any help they could.

93. That same afternoon, November 18, Rube Lloyd, Clyde Sitton and Oscar W. Busby, the head man in the machine shop, went to Robinson's office

and told Robinson that the committee had gone to see the district attorney and had discussed with him the possibility of forming an employees association.

94. During that day, November 18, 1938, the committee arranged for a meeting to be held that evening in the office of the Boswell Company's plant at Los Angeles, California,¹⁰ in which he stated in he had knowledge of the proposed holding of the meeting in the company's plant that evening but could not remember from whom he had gained such information. Robinson, on November 18, wrote and mailed a letter to the J. G. Boswell Company office at Los Angeles, California,¹⁰ in which he stated in part as follows:

The non-union men then appointed a committee and the committee went to the district attorney for instructions as to the best method of procedure for them to follow. It is my understanding the district attorney advised them that up to date they were in the clear. The non-union men have now called a meeting for tonight. Their thoughts seems to be running to the formation of a company union as a protective union in preventing them from being forced into the A. F. of L. or C. I. O. The Caminol Company and the Lucerne Creamery of Hanford have both had some trouble and this is the method they used in handling same. This is also true of the San Joaquin Light and Power Corporation. I have suggested to some of the cooler

¹⁰Board Exhibit No. 24.

heads that at the meeting tonight they appoint a committee to talk with the union men that were run off the job this morning and offer to allow them to come back to work on some basis as might be agreed on at the meeting of the employees tonight. That they take no action in forming a company union but appoint a committee to investigate such a proposal and make recommendations back to a later meeting.

I think it will be helpful if you will obtain any information you can regarding company unions and give me the benefit of your ideas in this connection. I will keep you posted as to developments.

The meeting as arranged was held in the office of the Boswell Company at Corcoran on the evening of November 18, 1938. A number of the employees, together with those in a supervisory capacity, attended that meeting. Minutes were kept of the meeting and offered as Board Exhibit No. 19. Later the Exhibit, after the contents of same had been read into the record, was withdrawn. The record shows that Samuel Brenes, head bookkeeper in the office of the respondent company at Corcoran, and a number of other supervisory employees attended that meeting, including Busby, Yankee Roberson, Rube Lloyd and Kelly Hammond.

95. Gordon L. Hammond, plant manager, admitted on cross-examination that Rube Lloyd and E. M. (Yankee) Roberson talked with him at the plant on the evening of November 18 and said "they said

that they had come there that evening for the purpose of letting the company know that they were satisfied with their work and the way it was being managed and the conditions in every way.' Hammond stated that after his conversation with Lloyd and Roberson he went about his work and did not pay much attention to what transpired but did say that the men remained there for some time.

96. A second meeting of the employees for the purpose of completing the organization of the independent union was held on November 28, 1938, in the American Legion Hall at Corcoran, California. At that meeting, bylaws and a constitution were adopted¹¹ and officers were elected. Samuel Brenes,¹² above described as head bookkeeper in charge of that department, was elected treasurer of the Independent; J. W. Hubbard, farm advisor to the Boswell Company, was elected president; and Oscar W. Busby,¹³ head mechanic in the machine shop, was elected

¹¹Board Exhibit No. 18.

¹²Brenes stated that he handled cash, makes out checks, corresponds with the Los Angeles Office in regard to bookkeeping entries, makes journal entries and adjusts various accounts. He admitted that he was at the head of that department and is paid on a monthly basis from the Los Angeles office.

¹³The above stated O. W. Busby is a head mechanic in the machine shop and directs the work of other employees in that department. He is paid on a monthly basis and receives his check from the Los Angeles office of the Boswell Company. He is the highest salaried man in the machine department and is therefore a supervisory employee and a responsible agent of the respondent.

vice president. E. M. Roberson, known as Yankee Roberson, who is classified as a clerk, was elected secretary. He is paid on a monthly basis from the Los Angeles office. Hubbard, Brenes and Roberson were the only ones nominated for the respective position to which they were elected. W. Willoughby, a storekeeper who is in charge of stores and materials and issuance and delivery thereof; H. G. McKeever, who is designated as an agronomist (experimental work in the raising of crops); and Rube Lloyd, head carpenter of that department, were elected as members of the labor relations committee of the Independent.

97. Eugene Clark Ely, an employee of the respondent and a member of Local 21798, stated that Roberson sent him a card notifying him of the second meeting of the Independent; that Tom Hammond, who has been described as foreman of the gin department, came around on the afternoon of the same day that he received the notice of the meeting from Roberson and asked him if he were going to attend the meeting of the Independent that night. Ely told him that he did not know. Hammond stated, "Well, if you want to keep on working you had better be there." Tom Hammond, although employed by respondent at the time of the hearing, was not called as a witness to deny Ely's testimony.

98. The bylaws and constitution of the Independent were adopted at the meeting of November 28, 1938. A number of those who signed the bylaws and constitution are Oscar W. Busby, J. W. Hubbard,

Tom B. Hammons, Joe Hammond, S. F. Brenes, W. F. Willoughby, and R. D. Lloyd, all of whom are supervisory employees.

99. At a meeting of the Independent held on April 5, 1939, Willoughby was elected president to take the place of S. W. Hubbard, and McKeever was elected secretary of the Independent. The membership of the Independent includes employees at the Corcoran and Tipton plants of the Boswell Company as well as supervisory employees in both plants. Tom B. Hammond, foreman of the gin department and Joe Hammond, foreman of the oil mill and linter room are both members of the Independent.

100. Brenes, admitted that the Independent does not now have or ever had any agreement of any nature with the respondent, Boswell Company, and that the Independent has never made any attempt to secure an agreement between the Independent and the respondent. Brenes' testimony in that regard seems to be borne out by a letter, dated April 15, 1939,¹⁴ written by H. G. McKeever, secretary of the Independent, to J. G. Boswell Company in Los Angeles, California, which in parts reads as follows:

On April 5, 1939, the question was raised from the floor regarding unemployment of Association members, and a motion was made requesting the Governing Board of the Association to notify company officials at both Corcoran and Tipton that the Association is keeping a list of un-

¹⁴Board Exhibit No. 28.

employed members with their qualifications and requesting the management to get in touch with the Association when new men are needed.

At a meeting of the Governing Board of the Association on April 13, 1939, the secretary was directed to perform this duty which is accomplished herewith. I do, however, wish to emphasize the fact that this is merely a request. We are not agitating for a closed shop but we want to do everything that is reasonable and just to keep our members employed.

Reviewing this letter in its most favorable light on behalf of the Independent, the most that can be said is that it is a mere gesture of an attempt to bargain on behalf of the Independent.

101. [The close association of Oscar W. Busby, J. W. Hubbard, Tom B. Hammond, S. F. Brenes, W. F. Willoughby, R. B. Lloyd and Joe Hammond, supervisory employees of the company, caused by the nature of their work, is indicia that these men are interested in the welfare and good will of the company and not that of the employees. They tell the employees in their respective departments when they are laid off in slack periods; when to return to work; instruct them in their work while employed; and generally supervise the whole operation of their departments as well as the work of their men. These same individuals are officers and direct the activities of the Independent. It is impossible to believe that under such circumstances the employees of the Boswell

plant have a fair and impartial representation on matters of vital interest to them when represented in collective bargaining by supervisory employees. "Collective bargaining under such circumstances is nothing less than a sham and a delusion when the employer sits on both sides of the table by reason of his domination of a particular organization with which he deals."¹⁵ Therefore, the undersigned finds from the above-stated facts and from the whole record that the respondent, Boswell Company, has interfered with, dominated and aided in the formation and administration of a labor organization known as the J. G. Boswell Company Employees Association of Corcoran and Tipton in violation of Section 8 (2) of the Act.

102. On January 21, 1939, Prior had a conference with the district attorney of Kings County at Hanford, California, in the presence of L. E. (Elgin) Ely, a member of Local 21798, regarding the law of California as to the use of pickets and the number that might be stationed at the Boswell plant. The district attorney admitted that such a conference was had between him and the above-named parties; that he read a portion of the picketing ordinance of Kings County to Prior and that it was discussed in a friendly way. He said that it was a very strict ordinance; that Prior explained to him the type of picketing that was being carried on at the Boswell plant. The district attorney said, ac-

¹⁵Case No. 6831, March Term 1938, Third Circuit.

cording to Prior, "Well, I can see nothing wrong with that type of picketing. As long as that type of picketing is being followed there will be no trouble between his people and our office and they were entitled to protection but that the ordinance would be strictly construed." The district attorney admitted that he explained to Prior at that meeting that it would be an excellent idea to get the chief of police of Corcoran on the wire so that the chief could listen into the conversation between the district attorney, Prior and Ely. The connection was made and the chief of police of Corcoran, through an inter-office communication system in connection with the telephone exchange at Corcoran, listened into the whole conversation.

103. After the conference at the district attorney's office, the district attorney said that he went down to the Boswell plant, looked the situation over and advised Louis T. Robinson that the picketing as conducted was lawful.

104. On January 23, 1939, at a legally called meeting of Local 21798, a vote was taken and it was voted to place pickets in accordance with the ruling of the district attorney at the plant of the Boswell Company to enforce the boycott. It was agreed in accordance with the ruling of the district attorney to place two men in an automobile near the entrance of the company with a sign reading, "A. F. of L. Picket Car," that method was adopted. On January 23, 1939, Prior, George Andrade and Walter Winslow drove to the plant and parked the car im-

mediately east of the scales of the Boswell plant near a power pole and made sure that the car was not on company property. When trucks appeared loaded with produce going to or from the plant, the pickets stepped up to the car and explained to the drivers of the trucks the difficulties between Local 21798 and the company and requested their cooperation. At this phase of the labor trouble at the Boswell plant the Associated Farmers stepped into the picture and their efforts towards organization and the part they played in this matter is hereinafter discussed as follows:

The Associated Farmers

105. A few days before September 8, 1938, a number of the farmers of Kings County, California, began talking about organizing an association of the farmers of said county. The first meeting of the organization efforts was held in the American Legion Hall on September 8, 1938, at Corcoran, California. It is not clear who called the meeting of September 8. However, J. B. Boyett, a farmer and an insurance broker, stated that people were notified by means of the telephone and by direct conversation as he and others met on the street; and that the rumors spread over the country that such meeting was to be held in the hall above specified. Boyett stated that he did make arrangements to have S. H. Strathman, field secretary to the Associated Farmers of the State of California, speak at that meeting. Boyett testified that Strathman explained to the large crowd at that meeting the functions and set-up of the Associated

Farmers and how the various individual county organizations were established, as well as explaining the set-up of the State organization known as the Associated Farmers of California. The said State organization is composed of about 43 members which represent that many organized counties, and in most instances the president of each county unit serves as a State Director, and that the entire membership of the State organization is composed of the directors selected from each county organization.

106. The Declaration of Policy¹⁶ for Agricultural Labor, a copy of which was picked up in Fresno County by J. B. Boyett, was adopted by the Associated Farmers as their declaration of policy regarding labor matters. That policy is the same policy generally adopted by other units of the Associated Farmers. The only change made in the declaration of policy of the Associated Farmers was a change in the name of Fresno County to Kings County. Copies of the policy were distributed among the members of the Association, business men and to other people in the county and reads in part as follows:

That agricultural employers pledge all of their resources to protect every agricultural worker in his right to work and insist that all law enforcement agencies cooperate to the end that adequate and impartial protection of all persons be maintained at all times; that we

¹⁶Board Exhibit No. 13c.

strongly condemn any policy of intimidation or coercion on the part of employers, employees or racketeers; that appropriate steps be taken through resolutions or any other proper ways to bring about respect on the part of labor organizations explaining that they imposed on employers; that membership in any organization is not necessary. In order to work in agriculture, either in producing or distributing or preparing for market of agricultural commodities, employees in agriculture should be free to meet and bargain with other employers collectively or individually whether or not such employees are members of any organization. Any employee should be permitted to discuss his problem with his employer at any time.

107. Preceding the meeting of September 8, 1938, the organizers of the Associated Farmers of Kings County received from the Associated Farmers of California (State organization) an application blank for Articles of Incorporation and the Bylaws. The Associated Farmers did not pay the Associated Farmers of California, hereinafter called the State Association, for the application for the Articles of Incorporation or the Bylaws and neither did it pay the travel expenses of S. H. Strathman to and from the meeting place of September 8, 1938.

108. At the meeting of September 8, 1938, nine directors of the Associated Farmers were elected. J. B. Boyett, a farmer and insurance broker, was

one of the nine directors elected at that meeting. A further meeting was arranged for September 12, 1938. At that meeting, held at the Farm Advisory Office in Hanford, California, J. B. Boyett was elected president of the Associated Farmers and the bylaws and constitution¹⁷ were adopted. Articles of incorporation were prepared at that meeting and were signed at a meeting held on September 29, 1938.¹⁸ The articles of incorporation were filed with the Secretary of State on October 19, 1938.

109. The minutes of a meeting of the board of directors on September 19, 1938, show that Orchard, one of the directors, moved to amend the bylaws. His motion reads as follows:

That any person or corporation not actively engaged in farming be eligible for associate member without the privilege of a vote.

L. D. Farmer, another member of the Board of Directors, seconded Orchard's motion. The motion was adopted by a unanimous vote. By stipulation between all counsel, it was agreed that the amendment to the bylaws be read from the minutes into the record and made a part of Board Exhibit No. 10.¹⁹

110. By means of the amendment to the bylaws, hereinabove discussed, any person or corporation may become an associate member of the Associated Farmers. Supervisory employees of the respondent,

¹⁷Board Exhibit No. 10.

¹⁸Board Exhibit No. 9.

¹⁹Board Exhibit No. 10 is composed of bylaws and the constitution of the Associated Farmers.

Boswell Company, and its general manager, Louis T. Robinson, are members of the Associated Farmers. Among the supervisory employees, other than Louis T. Robinson, who are members of the Associated Farmers are E. M. Roberson, whose position with the respondent has been heretofore described; H. C. McKeever, known as a technical expert in the raising of crops designated as an agronomist, who is paid on a monthly basis at a rate of approximately \$275 per month; J. W. Hubbard, farm advisor; Joe Hammond, foreman of the oil mill.

111. At a meeting of the Board of Directors of the Associated Farmers on September 12, 1938, a motion was made by Edward Orchard to increase the Board of Directors from 9 to 15 members. The motion carried. Lloyd Legget, L. D. Farmer, C. F. Evans of the Boston Land Company, Ralph Morgan and John Dawson were elected, which increased the number of members of the Board of Directors to a total of 15 members.

112. The State organization publishes a semi-monthly pamphlet known as "From Apathy to Action."²⁰ The name of that publication has since been changed to "Associated Farmer." Such publication is sent out to all regular and associate members.²¹ The first article appearing in the February 15, 1939 number is entitled "The Minority Rule."

113. The minutes of a meeting of the Board of

²⁰Board Exhibit No. 13d.

²¹Board Exhibit No. 11 constitutes a list of membership of the Associated Farmers, both regular and associate.

Directors of the Associated Farmers held on January 26, 1939, in Peden's Cafe, Hanford, California, show that J. B. Boyett, president of the Associated Farmers, discussed the picketing at the Boswell plant, and then called upon Mr. Dula and Mr. Pennybaker of Tulare County to explain the origin, functioning and working arrangements of the Farmers Transportation Association by which the farmers of Tulare and several southern counties had succeeded in keeping the flow of produce to the Los Angeles markets open despite hot cargo charges by radical elements. The minutes of that meeting, as above stated, were read into the record in lieu of offering Board Exhibit No. 12, which is, in fact, the minutes of the meeting in question. Boyett admitted that he described to all present at that meeting that pickets had been established at the Boswell gin and as fully as he could described the situation as he saw it and that the products of the gin had been declared "hot" and that there was some question about getting the farmers' products to the market, and that the products of the Boswell plant were not moving out in regular course as was the customary practice. Boyett invited Mr. Pennybaker to explain to all the meeting the organization and purpose of the Farmers Transportation Association.

114. Pennybaker told them at the January 26 meeting that Tulare County had had some experience with the Farmers Transportation Company in Los Angeles and that they had been very successful in getting farm products through to the market, the

final destination. In describing the system used, he said that the Farmers Transportation Company has a director located in Los Angeles who is deputized by the counties who subscribe to this service. Tulare County would employ a man deputized by the sheriff of the county, who would live in Los Angeles. He explained that each truck driver is certified by a certifying officer of the Farmers Transportation Association; that when such a truck driver would be stopped by a union man and asked for his credentials showing the union man that he was a union member and if he were not a member of the union, and the union man requested him not to proceed with the load the non-union truck driver, as per instructions, would call the Tulare County office of the Farmers Transportation Association for help. The county Farmers Transportation office would send guards, deputized by the county sheriff, out to the truck driver with instructions to see the load through to its destination regardless or irrespective of the nature of the trouble or from where such trouble came.

115. As shown by the minutes of the meeting of January 26, 1939, which minutes were read into the record and read as follows:

By which the farmers of Tulare and several southern counties succeeded in keeping the flow of produce to Los Angeles markets open despite 'hot cargo' charges of radical elements the meeting of the directors unanimously adopted a resolution, moved by Mr. Haag, seconded by Mr

Hart, that the Associated Farmers cooperate with the Farmers Transportation Association. The Associated Farmers of Kings County became a member of the Farmers Transportation Association and agreed to the same set-up as that of the Farmers Transportation Association. Boyett, president, and Botts, treasurer, of the Associated Farmers were designated as certifying officers for the truck drivers of Kings County. The expense of the operation of the Farmers Transportation Association is raised by popular subscription. Nothing further was done by the Associated Farmers of Kings County regarding its connection with the Farmers Transportation Association.

116. It is evident from the above stated facts that the Farmers Transportation Association was organized for the purpose of enforcing the labor policy of the State organization and the county units thereof; and it is clear from the whole record that the reason the Associated Farmers did nothing further was due to the fact that there was no cause for further action.

117. About 6 o'clock on the morning of January 30, 1939, L. E. (Elgin) Ely and Steven J. Griffin drove to their picket place in front of the respondent's plant and put a sign on their car which read in substance "A. F. of L. Picket Car." They stationed the car on the east side of the scale house near a telephone post which is near the entrance of the plant. When trucks came to the plant they notified the truck drivers that the Boswell Company was unfair to organized labor and asked them to cooperate with the Union.

118. On the morning of January 30, 1939, between two and three hundred farmers gathered at E. C. Salyer's ranch in the vicinity of Corcoran and there talked about the pickets placed by Local 21798 in front of the Boswell plant. About 9 o'clock that morning while Griffin and Ely were at their picket station they observed Lloyd Legget, a member of the board of directors of the Associated Farmers who is contracting some of the tractor work of the Boswell Company, go into the office of the respondent. Legget stayed in the office about 15 minutes, came out and disappeared in the direction of the business section of Corcoran. Legget returned about 15 minutes later with about 50 other automobiles containing approximately 300 men and parked his car in front of the picket car. The evidence shows without dispute that the farmers who met at the Salyer ranch were the same farmers who proceeded from the Salyer ranch to the Boswell plant that morning.

119. Legget got out of his car and went over to the picket car and opened the door on the side on which Griffin was seated. Walter Grisham, who is a member of the Associated Farmers and on January 30, 1939, was operating one of the Boswell farms consisting of 1300 acres by contract, but owned and operated by Boswell Company, who pays all the expenses of the operation of said farm; in fact it appears from the evidence that Grisham does nothing more than supervise the farm for the Boswell Company, was in the crowd on November 18, and approached the picket car. Among those present in ad-

dition to Grisham were Forest Riley, E. C. Salyer, Phillip Hansen, Grover Taylor Archer, Raymond Gilkey, Lloyd Legget and many others, who were members of the Associated Farmers. Legget said, "What have we got here, Steve?" and said, "You ought to be ashamed of yourself, out here on this picket line, as good as the company has been to you. They just can't stand this" and said "We are not going to stand for it. Get out of the car." Griffin said, "Listen Lloyd, if I am violating the law why don't you get the law. I will go with the law." Legget said, "No, Steve, you aren't violating the law but" he said "we are not going to wait on the law" he said "There is 150 Associated Farmers here that say you can't stay here." Someone in the crowd said, "No, there is 200." Griffin did not recognize the man who said there were 200. The crowd began to holler "turn the car over. Take them out. What are we waiting on." Legget said, "No, the boys are going to leave." Legget said to the pickets, "Boys, you better be getting out of here" and he said "don't come back" and said "If you come back we are not going to say what we are going to do to you the next time." Someone in the crowd hollered to Legget, "Tell him to move his car and they would get out." Ely told Legget and the crowd that he could not start his car because the starter was broken. The farmers told him that they would push him and then tore the picket sign off the back of the picket car and threw it in the back seat of the car.

120. Eugene Clark Ely went to the home of Mar-

tin and told Martin that they were ganging up on the pickets down at the plant and that they were likely to kill them. Martin got in his car, picked up W. R. Johnston and Boyd (Fat) Ely and drove down to the Boswell plant. Martin said that when they reached the plant there were about 200 people milling around on the right hand side of the road and around the picket car. Martin drove his car as close to the picket car as he could and said that Forest Riley, Brice Sherman, Walter Grisham, J. W. Hubbard, Russell Slaybough, J. T. Archer, George Cutter, a Mr. Willis and Ronald Squier, all members of the Associated Farmers, and other members of the Associated Farmers were there. Lloyd Legget came around on his side of the car and opened the door and said, "We are not going to have any more of this picketing around here." Slaybough jerked open the door on the other side of the car and then jumped back. Brice Sherman stuck his head in on the side of the car where Johnston was sitting and said, "Isn't this a pretty looking thing. It looks like a God damned christmas tree" and reached toward the union button on the coat of Johnston. Forest Riley, who was also at the car, said, "Boys we are not going to have this God damned A. F. of L. in Corcoran." Someone in the crowd spoke up and said, "You are going to have to get out of town." Martin said that E. C. Salyer was the man who told them they would have to get out of town. Martin asked who was doing this and Legget said, "The Associated Farmers." About that time Riley, Salyer and Wil-

bur said, "We the Associated Farmers" and said "there are 200 of us present and we represent a thousand more." Martin, official of Local 21798, told the picket boys to leave the picket line and drive into town. The picket car left and the party in Martin's car followed them out.

121. Forest Riley, E. C. Salyer, Phillip Hanson, Raymond Gilkey, Walter Grisham, and others who were members of the Associated Farmers admitted that a great number of the farmers left the Salyer ranch on the morning of January 30, 1939; that they talked about the pickets at the Boswell plant; and that they left the Salyer ranch by automobiles and drove to the Boswell plant and drove the pickets off the picket line. Riley, Salyer, Legget and Wilbur denied that they had said to Martin in the presence of others that the Associated Farmers were behind the driving of the pickets from the Boswell plant and further denied that the Associated Farmers had anything to do with forcing the pickets from in front of the Boswell plant. The testimony of Martin and Griffin regarding the incident of the morning of January 30, 1939, was corroborated by Johnston, Boyd (Fat) Ely and L. E. (Elgin) Ely.

122. E. C. Salyer admitted that he is a member of the Associated Farmers; that he does lots of work for said company and has in the past; that he did contract work for the Boswell Company; sold them products; borrowed money from them; bought farm equipment from them and did business with the Boswell Company in various different ways in-

cluding managing farms for the Boswell Company, but at the time of the hearing and on January 30, 1939, he was not managing any of the Boswell property. He did not know how much money he was indebted to the Boswell Company at that time. Salyer, in giving his version of the incidents above described which happened on the morning of January 30, 1939, said that he could not remember whether or not he was at his ranch on that morning but did remember that one particular morning about that time a number of farmers came to his ranch. He thought there were 200 or 300 but denied that he knew the object of them being at his ranch on that occasion and then said, "to go down there and ask the pickets to leave *they* interfere with the moving of their products and we didn't like it, didn't like them and didn't like them to be there" and said "I believe that is the attitude of the people in this district now, that is people that run the country and people that do things, the people here." Salyer said he could not remember the name of any one individual of the 200 or 300 people who were at his ranch that morning and said that he did not know of the meeting until he drove into his yard and found all of the people there. He did not know who had called the meeting at his ranch and he, himself, did not invite anyone out there but said he might have and he might not have. Later he admitted that he had heard it talked around town but would not admit whether or not he had heard it the night before and stated he knew it when he got there

that morning and said, "I don't remember—I think I drove in and the whole yard was full." Mr. Walsh then propounded the following questions to which Salyer gave the following answers:

Q. By Mr. Walsh: You weren't at home when they came?

A. I don't remember but I don't think I was.

Q. Is that your regular place of residence?

A. It has been for about 20 years.

Q. What time of the morning did they get there?

A. I don't know.

Q. What time did you go home?

A. I couldn't tell you that; gee, I couldn't meet so many people and do so many damn things, I couldn't tell you.

Q. Had you been away over night?

A. I don't know whether I was home or not.

Q. Did they leave your place at one time and drive down to the Boswell plant?

A. I don't know whether they did or not.

Q. Did you go with them?

A. I went; left the ranch. I don't remember whether there was anybody with me or whether I went alone this time. I wouldn't want to testify.

Q. Did anyone ride in your car with you when you went down down?

A. I don't recollect.

Q. Now, what happened when you got down to the mill?

A. A big crowd gathered around there was about all I seen of it.

Q. Do you recall having seen anybody there that you knew in the crowd?

A. I don't believe that I could testify that I did; I couldn't tell you definitely. I wouldn't want to testify to that.

Salyer denied having seen Forest Riley or Lloyd Legget at the Boswell plant when the pickets were driven off their picket station. He denied that he had made any statement to Martin and others on the picket line about the Associated Farmers being responsible and denied that he had heard Forest Riley, Lloyd Legget or Wilbur mention anything about the Associated Farmers being behind chasing the pickets from their picket line. The undersigned found, having noticed the demeanor and attitude of E. C. Salyer while on the witness stand and having fully reviewed all of his testimony and having taken cognizance of the fact that knowledge which ordinarily should be more or less fresh in his memory, that he denied that knowledge by withholding same while on the witness stand and because of his own contradiction of his own testimony, the undersigned cannot give much credence to any of his statements made while on the witness stand.

123. Forest Riley, a member of the Associated Farmers admitted that he was at the Salyer ranch on the morning of January 30 and left with the crowd and drove to the Boswell plant; that they were at the Salyer ranch between 8 and 10 o'clock

of that morning and that there must have been between 200 and 300 farmers there. When asked by Board's counsel who told him there was going to be such a meeting Riley answered, "I don't remember, I heard it so many places I can't recall." Riley said he thought he heard about the meeting to be held at Salyer's ranch on the morning of January 30 about 4 days before that date. Riley could not recall whether or not he had asked anyone else to go to that meeting; said he couldn't remember any of the names of the people who were present at the Boswell plant and could not remember who was in the picket cars or anything that anyone else said to the pickets except what he himself said. Riley testified that he asked them if they wouldn't move on before somebody started some trouble so they started on. Board's counsel read a long list of names of people who were at the Boswell plant to Riley and Riley failed to remember anyone of the named individuals as being there when the pickets were driven off the picket line, with the exception of possibly two or three, and said he did not even remember seeing E. C. Salyer there. When asked if he had seen any strangers there that morning Riley answered, "I don't know." On cross-examination Riley denied having heard anyone at the time the pickets were being driven off from in front of the Boswell plant property say that the Associated Farmers were responsible for that gathering. Riley did not specifically deny the statement purported to have been made by him to Martin,

which statement is as follows: "Boys, we are not going to have God damned A. F. of L. in Corcoran."

124. Lloyd Legget, as above stated, is a member of the Board of Directors of the Associated Farmers. He owns a 40 acre farm and leases 160 acres and from time to time does contractual work for the respondent, Boswell Company. The contracts in question cover work such as plowing land for the Boswell Company but in fact admitted that he might have been doing some work for the Boswell Company on the 30th of January 1939 but does not specifically remember whether or not he had such a contract on that date. His own admission shows that in a business way he had been closely connected with the respondent, Boswell Company, over a long period of time and during the last year he worked for the Boswell Company taking care of an irrigation ditch owned by the said Company. Legget admitted that he was at the Salyer ranch on the morning of January 30, 1939, but when asked if anyone else was there he answered, "I imagine there were, I don't know. There are lots of men out there all the time." A portion of his testimony is hereinafter set out in question and answer as follows, to wit:

Q. By Mr. Walsh: Did you see anybody there who were other farmers than you knew?

A. I couldn't tell you.

Q. Did you—would you say there was a crowd of people there?

A. Oh, I imagine there was.

Q. How many did you think there was?

A. Maybe a couple of hundred.

Q. What were they doing there?

A. Just like a man going to hear about anything. You start a fight and you can soon get a crowd.

Q. Well, what did you go there for?

A. I just heard of the meeting out there and I went out there.

Q. Who told you?

A. I don't know. I just heard it on the streets; somebody talking.

Q. When did you hear about it?

A. I guess I must have heard about it just before I went out there that morning but I wouldn't say for sure.

Q. Did you hear about it in Corcoran?

A. I guess I did.

Q. Were you here in Corcoran that morning early?

A. I don't know how early.

Q. Did you remember how long you stayed there?

A. No.

Q. Where did you go when you left the Salyer Ranch?

A. I went to the gin, I guess.

Q. What did you do there?

A. I don't know if I did anything or not.

Q. Had you been at the Boswell offices that morning prior to going to the Salyer ranch?

A. No.

Q. Did you talk to any official of the Boswell Company on the morning of January 30, 1939?

A. Prior to going to the Salyer ranch? I don't remember.

Q. And you are very definite that you were not at the plant then, before you went out there?

A. I don't know if I was there or not.

Q. I would like to have you give us your best recollection on that.

A. I can't remember. It is too far back.

Q. If witnesses were brought here to testify that you were seen coming out of the Boswell plant, would that refresh your recollection?

A. I wasn't there that morning.

Q. The morning of January 30 the men were asked to leave the picket line, were you at the Boswell office.

A. (By witness) That morning?

Mr. Walsh: Yes.

A. I don't think I was.

Q. Now, Mr. Legget, I would like you to be very careful and tell me whether or not you were at the Boswell plant, the Boswell gin, or the Boswell offices on the morning of January 30 prior to going to Mr. Salyer's ranch.

A. I don't remember exactly whether I was there or not.

Legget could not remember what time he arrived at the Salyer ranch and did not think he saw Salyer at the ranch that morning and did not remember whether he talked to anyone he knew at the Salyer ranch that morning. Other than Forest Riley, Legget did not remember an individual who was at the Salyer ranch. Mr. Walsh read a long list of names of

people who were alleged to have been at the Salyer ranch on the morning of January 30, 1939, other than Forest Riley. Legget either answered that he did not see the named individuals there or that he did not remember of seeing them there. When asked if R. C. Haag, a member of the Board of Directors of the Associated Farmers, was from Hanford, Legget answered, "I don't know. I guess I know" and said "I don't remember seeing him there." When asked if he had told anyone that there was to be a meeting held at the Salyer ranch he replied, "I don't remember telling anybody." Then the following question was asked:

Q. Did you drive to Mr. Salyer's ranch alone? A. I think I did.

Q. Did you bring anybody back with you?

A. I don't remember whether I did or not.

Q. Did you talk to Steven Griffin?

A. I said a few words to him.

Q. Did you ask him to leave?

A. I don't think I did.

Q. Did you hear anybody else ask the pickets to leave? A. No, I didn't.

Q. Did you talk to any of the other pickets?

A. No.

Q. Did the pickets leave?

A. I think they did.

Q. Now, was your car in front or in the rear of the picket car? A. I imagine, in front.

Q. How far in front?

A. I don't know.

Q. What is your best recollection on that?

A. Fifteen or twenty feet, I guess. I wouldn't say exactly how far.

Q. Were any other cars belonging to this crowd of farmers parked in front of your car?

A. I don't know.

Q. Where did the other farmers park their cars? A. I don't know.

Q. Did all of the farmers remain in their cars?

A. I don't know that either.

Q. Did you say anything further to Steve other than ask him what he was doing there?

A. I don't remember whether I did or not.

Q. Did you hear anybody else say anything there? A. No, I didn't.

Q. Well, now, will you tell in your own words just what took place after you arrived and parked your car and got out.

A. I done told you.

Re-direct

Witness: I don't remember what took place.

Q. Well, now, what I would like to know is this, Mr. Legget, tell me why you went from the Salyer ranch down to the Boswell Company gin?

A. Just followed the bunch down there.

Q. Well, what purpose did you have in speaking to Steve?

A. Well, I don't know. Just spoke to him because I knew him well.

On cross-examination when questioned by counsel

for the Associated Farmers, Legget was very positive in his answers when he stated, in response to a question, that the Associated Farmers of Kings County were not responsible for the meeting at the Salyer ranch or at the Boswell plant and he again was very positive that the name of the Associated Farmers "was not mentioned within his hearing" that morning at the Boswell plant.

125. George Henry Cutter, a member of the Associated Farmers who conducts a grain and feed business in Corcoran, California, did not go out to the Salyer ranch on the morning of January 30 but did go to the Boswell plant at the time the pickets were driven off from in front of the Boswell property. He stated his warehouse foreman came to his office and told him about all the cars crossing the track on their way to the Boswell plant. Cutter stated in effect, "I thought there were a lot of union men descending on the Boswell plant—that is the report I first had." That he then got in his car and drove out there and when he got there saw a different picture than he thought he would find and said, "I just saw a bunch of men just talking to more men in a car. I looked around, maybe there about 3 minutes, and having some work to do I went back to the office again." Cutter said that he did not get within 60 feet of the crowd and did not remember any of those who were there and stated, "I asked some party what it was all about, and I didn't recognize that party." On cross-examination, Clark, attorney for the Associated Farmers, asked Cutter the following question:

Q. I understand, Mr. Cutter, that this man you talked to was a stranger to you.

A. That is right.

Cutter's testimony that he talked to a stranger was not the truth as shown by Grover Taylor Archer's testimony which is hereinafter discussed.

126. Grover Taylor Archer, a farmer and member of the Associated Farmers, admitted that he was at the Boswell plant with the other farmers when the pickets were forced to leave the picket station in front of the Boswell plant and while there he met George Henry Cutter who stood there when he was there, that he talked with George Cutter and said he came there to look, not knowing what it was all about or anything. "I believe he asked me what was going on there. He just came there apparently not knowing what was going on," and then said that he had known Mr. Cutter for 20 years; that over that long period of time he had had business dealings with him and he and Cutter had been friendly all during that time.

128. A review of the testimony of Salyer, Riley, Legget and Cutter, part of which is above set forth by question and answer, is a typical example of practically all of the testimony adduced at the hearing by the Associated Farmers, and makes it impossible for the undersigned to give much, if any, credence to the testimony of the said Salyer, Riley, Legget, Cutter and the other witnesses produced at the hearing by the Associated Farmers. However, the testimony of Salyer, Riley, Legget and Cutter does aid

by the way of admission that the pickets were driven from the Boswell Company plant on January 30, 1939. However, the undersigned, after considering the testimony of Salyer, Legget and Riley, and by observing them on the witness stand, cannot give credence to their testimony and believes the testimony of Martin, Griffin, and Spear as to their description of the events which took place on the morning of January 30, 1939, and further believes that when Salyer, Legget, and Riley were asked either by Martin, Griffin, or Spear who was behind the movement to drive the pickets from their picket stations, Salyer, Legget and Riley said, "We, the Associated Farmers," and said, "There are 200 of us present and we represent a thousand more."

129. The respondent, Boswell Company's contention that it had no connection whatsoever with the action of the Associated Farmers in driving the pickets from in front of its plant on the morning of January 30, and that said respondent took no part in such action is not supported by the evidence. The evidence clearly shows that Case, a draftsman engineer for the company; J. E. Hubbard, farm advisor of the Boswell Company who gives orders to the foremen on the Boswell ranches and who advises farmers who borrow money from the Boswell Loan Corporation regarding the necessity of further irrigation and, in fact, who is a high paid official of the respondent company; and others were in the office of Gordon L. Hammond on the morning of January 30, 1939. Case, Hubbard and others in the office

watched through the windows while the Associated Farmers were in the act, by mob force, of evicting the pickets from in front of the Boswell plant.

130. Hubbard testified that he was there only for a few minutes and that he only saw the cars when they first came and then left the Hammond office. Case, on the other hand, in contradicting the testimony of Hubbard, stated that he, Hubbard and the others watched the whole proceeding from the time that the cars first arrived until the pickets had been driven off and the cars of the Associated Farmers had left the Boswell property. There is some testimony that Hubbard was seen among the farmers at the time the pickets were driven off on the morning of January 30, 1939. If Hubbard's testimony is correct that he left the Hammond office, it is very probable that he was seen among the crowd during the time the pickets were being driven from in front of the property. If, on the other hand, Case's testimony is correct, then there is no dispute that Hubbard watched the whole proceeding from the window of the Hammond office.

131. The undisputed testimony of Prior, which has heretofore been set forth, establishes the fact that J. G. Boswell, president of the respondent, during a conference between him and Prior at his office, said, while he and Prior were discussing the boycott, that if the Union were going to use goon squad tactics it might be necessary to obtain assistance in its labor dispute with the Union.

132. W. E. Grisham, appearing as a witness on

behalf of the respondent, who, in fact, supervises one of the ranches owned and operated by said respondent, admitted that he is a member of the Associated Farmers and was among the crowd on the morning of January 30, 1939, at which time the pickets were driven from in front of the Boswell property.

133. Many of the officials of the respondent are members of the Associated Farmers. Among those officials who are members of the Associated Farmers are Louis T. Robinson, general manager; Gordon L. Hammond, plant manager; and J. W. Hubbard, whose status with the respondent has been above described. Among the supervisory employees of respondent who are members of the Associated Farmers are Tom Hammond, Joe Hammond and other ranch foremen of the respondent company.

134. The respondent, Boswell Company, on or about September 20, 1938, paid \$287.09 to W. P. Camp, treasurer of the State organization, whose office is located at Bakersfield, California, and on or about March 21, 1939, paid the State organization at its home office 472 Russ Building, San Francisco, another sum of \$240.42. The fee paid by the ginning company to the State organization is determined by the amount of cotton ginned during the ginning season and the total sum of \$527.51 was the amount of dues assessed by the State organization against the Boswell Company. In addition to that sum of money paid to the State organization, the respondent paid an unidentified amount to the Associated Farmers of Kings County.

135 The respondent, Boswell Company, through its Farm Loan Corporation, finances crops for many members of the Associated Farmers. At the time of the application for a loan the farmer submits an approximate cost of the growing of the crops to the loan company. When the loan has been completed, the amount of money as a usual thing is credited to the account of the borrower and he in turn gives the Boswell Company a chattel mortgage on his crop to secure that loan. At various times during the growing season the farmer who borrowed the money furnishes a list of his expenses, together with the names of his creditors as well as the names of his employees and the amounts owed to each one. The Boswell Company pays the expenses so listed, including wages to the help in the growing and harvesting of the crop. When the crop is harvested, the products are delivered to the Boswell Company. The Boswell Company either sells the produce or stores same for the farmer to await better prices. In either event when the crop is sold an accounting is had between the farmer who borrows and the respondent, Boswell Company. In addition to the usual expenses incurred by the farmer, he is also confronted with the question of irrigation. The Boswell Company controls the water supply and charges the farmer at the rate of \$8.00 per acre for each watering of the crop. Some seasons one watering is sufficient, while in other seasons it is necessary to water the crop twice during the growing period. That charge is also booked against the farmer and is paid for by the farmer at the time of the accounting.

136. As shown from the above-stated facts, the Boswell Company and the Associated Farmers are so closely associated in business transactions, and by the fact that many of the officials and supervisory employees of the respondent, Boswell Company, are members of the Associated Farmers that the Associated Farmers and the respondent, Boswell Company, have an interest in common in seeing that no interference is caused to disrupt the flow of the produce from the farm to the Boswell plant and from the Boswell plant to the open markets and the Boswell Company was as much interested in the eviction as was the Associated Farmers. In fact, during the whole affair the officials of the respondent, by their own admission, admitted that they stood silently by and watched the Associated Farmers come upon the respondent's property and by mob force drive the pickets, who were acting within the law, from in front of its plant. The respondent, Boswell Company, made no protest in any form in opposition to the acts of the farmers; and by its failure to act condoned all the things done by the Associated Farmers on the morning of January 30, 1939. It received the benefits in that, with the pickets gone, the flow of produce to and from its plant would continue in the flow of commerce without interference. Therefore, the undersigned finds, from the above-stated facts and from the whole record, that the respondent, Boswell Company, fully condoned the acts of the Associated Farmers in driving the pickets from in front of the Boswell plant and to some extent

actually participated with the Associated Farmers in driving the pickets from the plant.

137. The undersigned further finds that the activities above described by the respondent, Boswell Company, and the Associated Farmers did interfere with, restrain and coerce and are interfering with, restraining and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and thereby is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

138. During the day of January 30, 1939, a number of the said farmers and some of the help on the Salyer ranch moved a large tent from the Reden ranch, then under lease by the respondent, Boswell Company, to the Salyer ranch and erected same for a barbecue, or victory party, to be held on the night of January 30 at the Salyer ranch. In the first place, the tent in question had been rented from the Pacific Tent and Awning Company of Fresno, California, and delivered by that company to the Reden ranch. Riley testified that he made the arrangements with the company for the use of the tent as an individual and not in any way connected with the Associated Farmers. Salyer stated that on the evening of January 30 someone said they wanted a tent but did not know who said it and he did not know who put it up. Later he admitted that his helpers or farm help erected the tent for the meeting that took place on the evening of January 30. He said he did not know under whose auspices it was held and he did not know

who the people were who said they would like to have a meeting. He admitted that they had speakers at that party and said that he furnished the roast pig; that someone would name something else that was needed and in five minutes it would be there. He said that they had six or seven hundred people there that night.

139. Included among some of those who were there were Boyett, president, and Botts, secretary-treasurer of the Associated Farmers, Legget, one of the Board of Directors of the Associated Farmers and many other members of the said Association. The Associated Farmers contend that the barbecue in question was not held under the auspices of the Associated Farmers nor did the Associated Farmers have anything to do with the planning of that barbecue or victory party. Botts admitted on cross-examination that the Associated Farmers owned considerable equipment used for the purpose of holding such meetings; that such equipment was under his charge and was stored in one of the garages on the Reden ranch, which ranch is under the control of the respondent, Boswell Company, by the way of a lease; that he was at the barbecue or party on the night of January 30, 1939, at the Salyer ranch and that he identified the equipment used that night was the same equipment owned by the Associated Farmers and as above stated stored on the Reden ranch. Botts, did not remember, as he claimed, who made the arrangements to use the equipment in question nor did he remember who had moved the equipment from

the Reden ranch to the Salyer ranch but admitted that Boyett, president of the Associated Farmers as well as all of the members of the Associated Farmers were at that barbecue at the Salyer ranch.

140. It appears from the record that a second barbecue was held on February 18, 1939, by the Associated Farmers on the Salyer ranch. They used the same tent that was used the night of January 30 and Botts admitted that the cost of the rental and transportation of the tent from the Pacific Tent and Awning Company of Fresno to the Salyer ranch and its return to the Pacific Tent and Awning Company was paid for by the Associated Farmers by the issuance of a check²² signed by Boyett as president of the Associated Farmers and Botts as treasurer, drawn to the order of the Pacific Tent and Awning Company of Fresno. Botts' testimony on that point is best shown by the way of questions and answers which are as follows:

Q. By Mr. Mouritsen: Well, I will ask you then if it was not in payment of the cost of transporting that tent to the Salyer ranch and returning it to Fresno.

A. It was.

Q. And other than the \$50 there was no cost connected with the transportation or setting up of that tent on the Salyer ranch, was there?

A. Not to my knowledge.

Botts further admitted when examined by Board's

²²Board Exhibit No. 31.

counsel that he could not remember that the meeting of January 30 at the Salyer ranch was discussed at the meeting of the Board of Directors of the Associated Farmers on January 26, 1939.

141. Martin, a business man from Los Angeles, was the principal speaker at the barbecue or party on the Salyer ranch on the night of January 30, 1939; Forest Riley stated that he invited Martin to speak at that meeting but that such invitation was given to Martin by Riley as an individual and not on behalf of the Associated Farmers. Riley said that newspaper reporters were at the meeting to publicize the activities of the Association, and in the evening edition of the Fresno Bee, dated January 30, 1939, the following article appeared:

Kings County Associated Farmers today announced a membership campaign will be conducted during February with Nick Wies of Corcoran as full time membership drive campaign manager and Brice Sherman as a part time solicitor.

The Association will meet tonight at Corcoran and Harry E. Martin of Los Angeles, who recently returned from Washington where he testified before the Dies Committee investigating un-American activities, will speak.

Riley is in error when he said he invited Martin as an individual and not on behalf of the Associated Farmers. It is not clear what Martin said at the meeting, but there is some evidence that he talked against the Union and the organizers and that force

should be used to rid the community of such people.

142. The record shows that Martin was invited to give his speech at that gathering on the Salyer ranch by Forest Riley, a member of the Associated Farmers, but Riley admitted as above stated, that at the meeting of the Board of Directors of the Associated Farmers on January 26, 1939, newspaper reporters were at that meeting to publicize the activities of the Associated, and in view of Riley's admission of the presence at that meeting of the newspaper reporters and in view of the article above set out appearing on January 30, 1939, in the Fresno Bee, the undersigned finds that Martin was invited to speak at the barbecue by Riley, not as an individual, but on behalf of the Associated Farmers of Kings County, Inc., a corporation.

143. The Associated Farmers contend: First, that it, as such, was not responsible for the eviction of the pickets from in front of the Boswell plant on January 30, 1939; second, that the Associated Farmers was not involved in interstate commerce and, therefore, not subject to the jurisdiction of the National Labor Relations Act or to the National Labor Relations Board; and third, that the Associated Farmers was not responsible for the victory party or barbecue held on the Salyer ranch on the night of January 30, 1939. The undersigned finds that none of the contentions of the Associated Farmers are supported by the record.

144. As to the first contention, the evidence clearly shows that the Associated Farmers discussed at

its meeting on January 26, 1939, the picket situation at the Boswell plant and that Liggett, a member of the Board of Directors, as well as a great many other members of the Associated Farmers, took part in the eviction of the pickets from the Boswell plant on the morning of January 30, 1939, and further shows that the whole affair was planned under the direction of the Associated Farmers.

145. As to the second contention, Section II under Definitions of the National Labor Relations Act states: "the term 'employer' includes any person acting in the interest of the employer directly or indirectly." The Associated Farmers without question were acting directly in the interest of the respondent, Boswell Company, who is without question involved in interstate commerce and, therefore, under that provision of the Act there is no doubt that the respondent, Associated Farmers, are subject in this case to the jurisdiction of the National Labor Relations Act and therefore to the jurisdiction of the National Labor Relations Board. It is very evident that Congress in passing Section II and making it a part of the Act, and by describing the full meaning thereof, intended that any person or group of persons, whether or not they are in interstate commerce, if acting in the interest of an employer, operating in interstate commerce, either directly or indirectly, comes within the meaning of the National Labor Relations Act, and the undersigned so finds.

146. As to the third contention, the evidence clearly shows by the admission of Botts, secretary-

treasurer of the Associated Farmers, that the equipment owned by the Associated Farmers and stored on the Reden ranch, under lease to the respondent, Boswell Company, was the same equipment used at the barbecue party on January 30, 1939; that the president, secretary-treasurer and many members of the Board of Directors and other members, both regular and associate, of the Associated Farmers attended that barbecue and that said barbecue on said night of January 30 followed the driving of the pickets from the Boswell plant on the morning of January 30, 1939; that Martin, speaker at that meeting, was invited by the Associated Farmers and the cost of transportation of the tent used at that meeting was paid for by a check drawn to the order of the Pacific Tent and Awning Company of Fresno and endorsed by the secretary-treasurer and president of the Associated Farmers. Therefore, the undersigned finds that the Associated Farmers, together with the respondent, Boswell Company, were responsible first, for the planning and eviction of the pickets from in front of the Boswell plant on the morning of January 30, 1939, and second, that it is immaterial as to whether or not the Associated Farmers are involved in interstate commerce; that they had a common interest with that of the respondent, Boswell Company, and acted in the interest of the respondent, Boswell Company, as well as their own, in driving the pickets from in front of the Boswell plant on the morning of January 30, 1939; third, that the Associated Farmers were responsible for

the calling of the barbecue party or meeting on the night of January 30, 1939, in which the respondent Boswell Company participated, and further finds that the activities above set forth have interfered with, restrained and coerced the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7 and Section 8 (1) of the Act.

Corcoran Telephone Exchange

147. Margaret A. Dunn was first employed by the Corcoran Telephone Exchange, hereinafter referred to as the Exchange, on August 23, 1924, as a telephone operator. In 1926 she was promoted to head operator and in fact, by Glenn's own admission, managed the Exchange for him. Mrs. Dunn is the mother of a number of children including Dorothy Dunn, Margaret Dunn and Jack Dunn.

148. Dorothy Dunn, her daughter, was attending college at Los Angeles, California, in 1938 and 1939. About the first of February 1939 Dorothy came to her home at Corcoran for a vacation. On her way home by bus from Los Angeles Dorothy met Mr. Sprecker, an attorney for the Board. When they reached Corcoran, a small city of 2,000 population, they met Prior, above described, at the depot. Prior had his automobile. Sprecker, Prior and Dorothy drove to the Dunn home. Prior remained in the car and Sprecker and Dorothy went into the Dunn home. Margaret and Jack Dunn, a son and brother, and a Mr. Secord, an engineer em-

ployed by the respondent, Boswell Company, were there. Sprecker left almost immediately. After he left Secord told Dorothy of the ill feeling toward Prior and that it was bad for her to be with him.

149. On February 8 Dorothy and her sister, Margaret, drove by the Boswell plant and stopped and waved at Prior. Prior got out of his car and walked to the Dunn car and while talking to the Dunn girls Forest Riley and his daughter Hazel drove by. They waved to the Dunn girls. Two or three days later Dorothy met Secord in a soda fountain establishment in Corcoran. Secord told Dorothy that she was very much in the wrong with the people of Corcoran; that she had been seen at the picket line and that many of the employees of the Boswell Company had seen her there and were very much worked up over the fact that she had been at the picket line and, as she testified, that "I should apologize to W. W. Boswell for he was very angry at the fact that I had been seen there." W. W. Boswell is a brother of J. G. Boswell, president of the Boswell Company.

150. During a conversation on or about February 15, 1939, between Mrs. Dunn and Mr. Galusha, manager of the San Joaquin Gin Company, Mrs. Dunn told Galusha that she had heard a petition had been circulated and given to Glenn to have Mrs. Dunn fired. She asked Galusha to talk to Boyett and find out what he knew. About an hour later Galusha, after talking to Boyett, told Mrs. Dunn that Boyett admitted such a petition had been circu-

lated because Mrs. Dunn's two daughters had been seen with the pickets at the Boswell plant; and that the Boswell Company were blaming Mrs. Dunn for delivery of messages through her daughters to the pickets.

151. The next day about 2 o'clock in the afternoon Mrs. Dunn talked to Glenn, president of the Exchange, about the matter. Glenn told Mrs. Dunn that he had been approached by a group of men who wanted Mrs. Dunn discharged because of leakage on the switchboard and about the girls being seen with the union men. Glenn said that he told the men that Mrs. Dunn had worked for him for 15 years; that he relied on her in every way and would not discharge her unless they brought actual facts in the case; that he believed in her thoroughly; that her work was satisfactory; and that he would stand by her. Mrs. Dunn told him the facts about the girls meeting Prior and he said he believed her story. Glenn shook her hand, patted her on the back and said "Pay no attention to it." They talked about the labor trouble at the Boswell plant and on that point Glenn told Mrs. Dunn, that because of the labor trouble the men were worked up over the situation and that any little thing that might take place would cause a lot of disturbance in town.

152. At 8 o'clock on the morning of February 16 Dunn called Glenn and requested that he come to her home. Glenn agreed and when he reached the Dunn home, told Mrs. Dunn that he had talked to

Forest Riley and Riley had informed him that he (Riley) knew about the men coming to see him about the discharge of Mrs. Dunn. Glenn said that W. W. Boswell, a brother of J. G. Boswell, and in charge of the cattle owned by respondent, told him that he would get Mrs. Dunn's job if it was the last thing he did; that he was going to put detectives on the case to watch the girls and prove their point; that he was going to have a dictaphone installed in the Dunn home, and then said he had no objection to Mrs. Dunn but they were not going to tolerate any of the Dunsns associating with the pickets. Glenn asked Mrs. Dunn if the story that the girls had been seen on the picket line was true. Mrs. Dunn again explained the incident to Glenn. On the morning of March 1 at the office of the Exchange Glenn asked Mrs. Dunn for her resignation. She refused and asked him why. Glenn told her that pressure was being brought to bear heavily on him and he would have to ask her to resign, that "he, Glenn, just couldn't stand what was being said and said they were certainly awful." Mrs. Dunn asked him what was awful and he refused to answer but finally told Mrs. Dunn that there was nothing personal against her or her work and asked Mrs. Dunn if it were true that her daughter, Margaret, was keeping company with Prior. Mrs. Dunn told him that it was not true. Then he asked Mrs. Dunn if Dorothy belonged to a secret organization in school. Mrs. Dunn told him that she did not. The conversation ended and Mrs. Dunn went to work.

153. On March 2, about 7 o'clock in the morning, Glenn called Dunn at her home and told her she was getting too old for the work and was sick and that she should stay at home.

154. Glenn, in giving his version of the conversation of February 16, stated, "I told her that I had not heard anything about any petition of that kind, that she need not worry—then she went on to say that the girls had talked in the morning about the pickets being down at the gin and she told them, asked them why they didn't go down there and see. The girls said they had not seen any pickets before, how it was worked so she advised them to go down there and see. I told her that the fact of the petition being circulated would have no bearing on her in any way, believed I could not take cognizance of that because we were a public service corporation and that we must keep neutral in every thing of that kind." The undersigned asked the following questions:

Q. What did you mean then when you said or started to say she need not worry.

A. Because she was fearful that this petition she told me that they were petitioning me to fire her and I told her she need not worry about that. Told her I would not take cognizance of such a petition; for her to go right ahead and just not say anything.

Q. And you did not intend to fire her?

A. No sir.

Glenn said that he had heard nothing about Mrs. Dunn's daughters being seen talking to the pickets until Mrs. Dunn had told him about it during that conversation.

155. As to the conversation in the office on March 1 between Mrs. Dunn and Glenn, Glenn admitted that he did have a conversation in the back of the office; that he told Mrs. Dunn that Mrs. Woodruff had told him that she had made every effort to get along with Mrs. Dunn; that she found it impossible to do so and that she wanted to quit, and said: "I told Mrs. Dunn that on account of her physical condition and the use of liquor that was so offensive to the girls that I wanted her to resign." Mrs. Dunn refused and as Glenn claimed she told him that she would make every effort to get along and that she would apologize to Mrs. Woodruff and the girls. Glenn said that he left and when he returned that evening Mrs. Dunn ran past out of the office sobbing hysterically and that Mrs. Dunn a little later called him and asked him if she could come back to work; that he told her "no," that he would not talk to her any more at that time but that it was better for her to stay at home and rest.

156. On the morning of March 2 Glenn called Mrs. Dunn and told her that she could not come back to work. Glenn, on direct examination, testified that he had a conversation with Mrs. Dunn around the first or last of January 1939 and during that conversation told Mrs. Dunn that Albert Armour of the Boswell Company had brought

charges that she was running out nights with Galusha and that they objected very strenuously because Galusha was superintendent of the Anderson-Clayton Ginning Company and since she was handling their intimate business calls over the phones they objected to her running around with a competitor very much. Glenn stated that Mrs. Dunn told him that as long as it was after working hours that it was no concern of the telephone company. Glenn told Mrs. Dunn as far as the business element was concerned it was his business and that if the thing was going to continue he wanted her to hand him her resignation and at that time he also spoke to her about dissention in the office.

157. The undersigned asked Glenn the following question:

Q. Did you blame Mrs. Dunn for that leak?

A. No sir.

Glenn admitted on cross-examination that often-times during the year of 1938 because of wind, rain, and other weather conditions wires and cables crossed and when such wires crossed that there *was* an interruption in the service, in that others could take up the receiver and hear a conversation between parties even though they were on a different line and admitted that the Exchange had had numerous complaints because of that type of trouble.

158. Glenn further testified on direct examination that they had numerous complaints against Mrs. Dunn because of defect as a telephone operator; that some of them came from the Boswell

Company and among some of the others was Blakely Crary, cashier of the First National Bank of Corcoran. Crary's testimony will hereinafter be fully discussed.

159. Glenn stated on direct examination that on the first of March Mr. Woodruff came to him in the bank building and told him that Mrs. Woodruff had decided to resign her position because of the trouble with Mrs. Dunn and it is here pointed out that Woodruff, who works for the Exchange, is the husband of Mrs. Woodruff who complained against Mrs. Dunn.

160. Mr. Glenn, when questioned by the undersigned admitted that he had had numerous complaints against other operators and that he has never had a year since he had been in the business without receiving complaints both against the operators and because of poor service and that on March 1, 1939, he had not made up his mind to fire Mrs. Dunn, in fact, admitted that he made up his mind over night between March 1 and March 2. Mrs. Woodruff was given the position formerly held by Mrs. Dunn.

161. Glenn admitted on cross-examination that he talked to Louis T. Robinson prior to the Dunn discharge about the labor trouble at the Boswell plant and to a great many business people in the city of Corcoran but denied that he ever talked to a single farmer in that vicinity or to Forest Riley about said trouble. Glenn who farms some 5,000 acres and finances his crop through the Boswell

Loan Corporation admitted that he talked to practically all the business men in Corcoran about the labor trouble, including Robinson of the Boswell Company but did not talk to a single farmer regarding the matter. It is evident that Glenn withheld information during the giving of his testimony regarding important facts pertaining to this case, and that his testimony is greatly reduced in value.

162. Crary has lived in Corcoran since 1930. From 1930 to July 21, 1934, he served as an assistant cashier of the old First National Bank of Corcoran and since July 1, 1934, he has been cashier of the First National Bank of Corcoran. Appearing as a witness for the Exchange, he testified that for 2 years preceding March 1, 1939, he complained several times against the service rendered by Mrs. Dunn and explained this several times as meaning a minimum of three and a maximum of five times. In January 1939, when Glenn was in his bank he said he told Glenn that he had attended a dinner a short time prior to that and the subject of the poor service of the telephone exchange was discussed and one member of the party said that they intended to complain to the Railroad Commission unless the service was improved and that Mrs. Dunn was the only subject of the complaint. He further said that he had never had any trouble with any other operator. On cross-examination Crary could not remember a single individual who was at the dinner which he told Glenn about except possibly his wife. He said that the bank maintained two trunk lines

and four telephones in the bank and that he did not know whether Mrs. Dunn was the day or night operator, and said "I know I recognized her voice when she was on."

163. When questioned by the undersigned he admitted that he made from 20 to 30 calls a day and never had a complaint against any other operator except Mrs. Dunn and that he only recognized her as being Mrs. Dunn by her voice and then said he did not know whether she was the day or night operator. It is apparent from the ordinary surrounding circumstances of his position that he (Crary) is well acquainted with the people in Corcoran and surrounding community and his denial that he remembered any of the individuals at the dinner cannot be given credence.

164. John Earnest Dunn, husband of Margaret A. Dunn, who holds the position of foreman of machinists for the California Company Pipe Lines Department, subsidiary of the Standard Oil Company of California, testified that on the evening of March 1 he went to the office of Glenn behind the bank building in Corcoran and asked Glenn what he had against his family. Glenn said, "You know there has been trouble, labor trouble at the Boswell gin." Dunn said, "Well, Mr. Glenn, I was under the impression that this trouble was all over. I haven't heard anything about it in about 2 or 3 weeks and therefore I considered it was closed." Glenn said, "Oh, no it is not closed. It is getting worse" and said "The union has been threatening to organize

farm labor in this district for some months. 'They haven't been able to do so and that they figure how the best way they can get at this question is to organize the Boswell Company and their employees in turn will refuse to handle farm products which are produced under non-union conditions.'" Dunn interrupted him and said, "Mr. Glenn, I am not interested in all that. I came down here to ask you why you have discharged my wife" and Glenn said, "Wait a minute. This all ties in together" and said "You know your two daughters were seen down at the Boswell gin talking to the pickets." Dunn said, "Well, then, Mr. Glenn, in other words pressure is being brought to bear on you to discharge my wife because my daughters were seen talking to the pickets." Glenn said, "Yes, they are threatening to ruin my business if I don't do so."

165. The next morning, March 3, Glenn picked up Dunn in front of his office and took him for a ride in his automobile up toward the San Joaquin gin and back again. Glenn told Dunn during that ride that he sent for him because he wanted to correct an impression that he knew Dunn had taken from the conversation the evening before, that is that Glenn thought Dunn understood from their conversation that the Boswell people were bringing pressure to bear on him to discharge his wife and he wished to correct that impression. Dunn said, "Well, Mr. Glenn, then this petition that has been circulated has had nothing to do with this case." Glenn said, "There has been no petition circulated

that is all, there is nothing of that kind in it at all." Dunn said, "Well, Mr. Glenn, there are several friends of ours have told us that this petition was circulated and now you are either badly mistaken or our friends are damn liars." Glenn said, "Nine men came to see me 10 days ago, approximately 10 days ago" and he said "I laughed at them and a couple of days three of these men came to me, met me on the street corner and demanded that I do something about this." Glenn said that he fired Mrs. Dunn because of her physical condition and that she drank liquor while on the job. When asked by Mr. Clark whether or not the first thing he said to Mr. Dunn on that occasion was in substance or effect this "You know there has been trouble, labor trouble at the Boswell gin" Glenn answered that he did not remember. On cross-examination he said that was not the first thing he said. The testimony of Mrs. Dunn shows that she only drank wine on two occasions while at work and on one of these occasions Mrs. Glenn gave her the liquor she drank. Glenn admitted that he called the Dunn home and asked that Mr. Dunn come down to his office on the morning of March 2 and admitted that he picked Dunn up in his car and admitted that he had the conversation with Dunn in substance as Dunn related it. Glenn, on cross-examination, denied that the nine men had come to see him regarding the discharge of Mrs. Dunn. In view of the testimony of Glenn and the undersigned's observation of him while on the witness

stand and considering his almost apologetic manner in his testimony regarding Mrs. Dunn and in view of the various reasons he gave for her discharge which are entirely unsupported by his own testimony, therefore the undersigned believes the testimony of Mrs. Dunn in relating her conversations with Glenn and the undersigned believes the testimony of John Earnest Dunn regarding his version of Glenn's statements made to Dunn during the course of their conversation, which statements are as follows: "You know there has been trouble—labor trouble at the Boswell gin," and then in response to a question by Dunn, Glenn said, "Oh, not it is not closed. It is getting worse." That statement was referring to the labor trouble. The undersigned further believes Dunn when he stated that Glenn told him that nine men had been to see him and demanded that he discharge Mrs. Dunn. Therefore, the undersigned finds that Margaret A. Dunn was discharged from her position as head operator of the Corcoran Telephone Exchange because of the pressure brought to bear upon Glenn, president of said Exchange, by the same members of the Associated Farmers and the Boswell Company and that her discharge was the direct result of the fact that her daughters Dorothy and Margaret were seen talking to the pickets in front of the Boswell plant on or about February 8, 1939.

166. On March 13, 1939, Margaret A. Dunn filed charges against the Exchange with the National Labor Relations Board.

167. Mrs. Dunn testified that she had been advised she would need two witnesses to substantiate her charges in a hearing before the National Labor Relations Board. On March 21, Mrs. Dunn talked to Forest Riley at her home and asked Riley if he would be her witness in a hearing before the Labor Board. She said Riley told her she might as well have a revolution as for the National Labor Relations Board to come down there, and asked her why she wanted a hearing. Riley went on to explain the feeling they had against the Labor Board coming to Corcoran butting into their affairs and said, "They are not going to tolerate the National Labor Relations Board ever coming in there as they felt like they could handle their own business in their own way." Riley during the conversation brought into the discussion the question of the Dunn girls and said that he saw them talking to Prior at different times. Mrs. Dunn testified that she made Riley admit that he only saw the girls talking to Prior on the one occasion. Mrs. Dunn said, "All right just as such pressure was brought to bear on Mr. Glenn to dismiss me, you go down there and bring pressure to bear to take me back on my work." Riley said he did not think he could do that.

168. On the same day, March 21, Russel Slaybough came to the Dunn home and during a conversation that afternoon in the back yard of the Dunn home, Mrs. Dunn asked Slaybough if she had this hearing would it hurt different people around Corcoran and would it cause this upheaval that Mr.

Riley claimed and he answered, "yes, it would." Mrs. Dunn told Slaybough that if that was the case she would ask the National Labor Relations Board to withdraw it and not have a hearing. Slaybough did not deny Mrs. Dunn's testimony. About 3:30 or 4 o'clock of that same afternoon, March 21, 1939, Boyett, president of the Associated Farmers of Kings County, came to the Dunn home and talked to Mrs. Dunn. Mrs. Dunn told Boyett she had talked to Riley and to Slaybough and that she had told them that she would withdraw the charges because she did not want to cause a disturbance in the town. Mrs. Dunn's testimony was not denied by Boyett. Boyett told her that Clarence Salyer and Forest Riley had approached him with this petition and he told them to tear it up and have nothing to do with it and that he would not either. After those conversations on March 21 Margaret Dunn sent the following telegram to the Regional Office of the Board at 1095 Market Street, San Francisco:

"Do not send representative Case XX-C-619 everything satisfactory.

Margaret A. Dunn."²¹

169. On April 4, 1939, Margaret A. Dunn sent the following letter to the National Labor Relations Board:

"In regard to Case No. XX-C-619, will say that it has not been settled satisfactorily to date and would appreciate you holding case open un-

²¹ Board Exhibit 21.

til you hear from me again.

Certain interested parties have said I would get my work back if I did not press charges but I have not gone back to work yet.

Respectfully

Margaret A. Dunn ²²

170. On April 14, Mrs. Dunn wrote another letter to the Board's Regional Office in San Francisco, which letter²³ reads as follows:

"I would like very much to have you drop my case against the Corcoran Telephone Exchange as there are too many personal friends as well as members of my family involved. We feel sure a satisfactory settlement will be made in a short time. We feel you would help us more by dropping the case than continuing it. I will not be here for interviews with anybody.

Sincerely

Margaret A. Dunn."

171. Even though there is considerable proof that members of the Associated Farmers brought pressure to bear upon Mrs. Dunn to withdraw her charges filed against the Corcoran Telephone Exchange because of her discharge, there is not substantial evidence to prove that the Associated Farmers of Kings County, Inc., a corporation, as such, had taken any part in the acts of its members in so exerting pressure and neither is there substantial

²² Board Exhibit 22.

²³ Board Exhibit 23.

proof to show that the Associated Farmers of Kings County had authorized, either directly or indirectly, the motion taken by some of its members regarding the Dunn discharge, and the undersigned so finds.

172. By the activities above set forth in Section IV, A, B, and C, the respondent, Boswell Company, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7, Section 8 (1) and Section 2 (6) and (7) of the Act.

173. James W. Gilmore was refused employment on July 1, 1938, L. E. Ely was discharged on November 26, 1938, Boyd L. Ely was locked out of his employment the night of November 14, 1938, and Walter Winslow was locked out of his employment on November 15, 1938, Steven J. Griffin and W. R. Johnston were discharged on November 17, 1938, O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear and H. M. Wingo were evicted by force and violence and threats of force and violence from their employment by respondent, Boswell Company, on November 18, 1938, E. C. Powell was discharged on November 26, 1938, and Eugene Clark Ely was discharged on January 30, 1939, by respondent, Boswell Company, for the reason that said James W. Gilmore, L. E. Ely, Boyd L. Ely, Walter Winslow, Steven J. Griffin, W. R. Johnston, O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear, H. M. Wingo, E. C. Powell, and Eugene Clark Ely joined and assisted a labor organization known as Cotton Producers and Grain Mill Workers Union,

Local 21798, affiliated with the A. F. of L., and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

174. By the refusal to reemploy James W. Gilmore on July 1, 1938, the discharge of L. E. Ely on November 26, 1938, and the lock-out of Boyd L. Ely, on November 14 and Walter Winslow on November 15, and by the discharge of Steven J. Girffin and W. R. Johnston on November 17, and by the eviction of O. L. Farr, George Andrade, Joe Briley, R. K. Martin, L. A. Spear and H. M. Wingo, and by the discharge of E. C. Powell and Eugene Clark Ely, respondent had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

175. By said refusal to reemploy James W. Gilmore, and the discharge of L. E. Ely, and the lock-out of Walter Winslow and Boyd D. Ely, and the discharge of Steven J. Griffin and W. R. Johnston, and the eviction of O. L. Farr, George Andrade, R. K. Martin, L. A. Spear, and H. M. Wingo, and the discharge of E. C. Powell and Eugene Clark Ely, respondent has discouraged membership in a labor organization known as Cotton Producers and Grain Mill Workers Union, Local 21798, affiliated with the A. F. of L., in violation of Section 8 (3) and Section 2 (6) and (7) of the Act.

176. There is considerable proof that officers and supervisory employees of the respondent Boswell

Company brought pressure to bear upon Mrs. Margaret Dunn to withdraw her charges against the respondent Corcoran Telephone Exchange because of her discharge, but no substantial evidence to prove that the respondent Boswell Company, as such, either directly or indirectly authorized the action taken by some of its officers and supervisory employees. Therefore, the undersigned finds that the respondent Boswell Company cannot be held to have violated Section 8 (4) of the Act.

177. By the activities above set forth the respondent Associated Farmers of Kings County, Inc., a corporation, has interfered with, restrained, and coerced the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7, Section 8 (1), and Section 2 (6) and (7) of the Act.

178. By the activities above set forth, the respondent Corcoran Telephone Exchange, has interfered with, restrained, and coerced its employees, and the employees of the respondent Boswell Company in the exercise of the rights guaranteed in Section 7 (a) and Section 8 (1) and Section 2 (6) and (7) of the Act.

179. Mrs. Margaret A. Dunn was discharged on March 2, 1939, by respondent Corcoran Telephone Exchange for the reason that her two daughters were seen talking to the pickets on the picket line in front of the respondent Boswell Company's property, and that by said discharge the respondent Corcoran Tele-

phone Exchange has violated Section 8 (3)²⁴ and Section 2 (6) and (7) of the National Labor Relations Act.

180. The undersigned finds that members of the respondent Associated Farmers, and officers of the respondent Boswell Company, and the respondent Corcoran Telephone Exchange brought pressure to bear upon Mrs. Margaret A. Dunn to withdraw her charges filed on March 14, 1939, with the National Labor Relations Board against the Corcoran Telephone Exchange. On March 21, 1939, Margaret A. Dunn sent a wire to the National Labor Relations Board's regional office requesting that no representative be sent to investigate her case, and on April 4, 1939, sent a letter to said Board's regional office withdrawing her charge filed against said respondent Corcoran Telephone Exchange. The undersigned further finds that from all the facts above set forth, the respondent Corcoran Telephone Exchange violated Section 8 (4) of the Act by its refusal to re-employ her after her discharge on March 2, 1939, as above noted.

181. That the activities of the respondents, J. G. Boswell Company, the Associated Farmers of Kings

²⁴ Memphis Furniture Manufacturing Company, 3 N.L.R.B. p. 26—in this case the Board held that respondent violated Section 8 (3) of the Act by discharging Mrs. Bermer, a non-union employee, because her husband, an employee of respondent, was a member of the union. The principle involved in this case is similar to the principles involved in the case under consideration.

County, Inc., a corporation, and the Corcoran Telephone Exchange, above set forth, occurring in connection with the operations of the respondents as above described, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have lead to and tend to lead to labor disputes burdening commerce and the free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. Respondent, Boswell Company, by asking its employees if they were members of Local 21798; by telling the members of Local 21798 that the plant would be shut down if the union came into the plant; by telling union members that the respondent company would not stand for a union being organized in its plant; by spying upon the members of Local 21798 who were attending a meeting at Bakersfield; by refusing to reemploy James W. Gilmore on July 1, 1938, because of his union activities; by locking out Boyd Ely and Walter Winslow from their employment by shutting down the oil mill; by discharging W. T. Johnson, Steven Griffin; by evicting through its employees and supervisory employees through means of force and violence and threats of force and violence George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, E. C. Powell, L. A. Spear and H. N. Wingo and by refusing said individuals, except Joe

Briley reemployment; by discharging and by refusing to reemploy Eugene Clark Ely or any of the above-named individuals; by permitting a meeting to be held in its plant called by its supervisory employees for the purpose of organizing an independent union; by attempting to force employees to join the independent union in order that they may work; by interfering with, coercing, aiding, and dominating the J. G. Boswell Company Employees Association of Corcoran and Tipton (the Independent Union) in its formation and administration of its affairs and thus discouraging membership in the labor organization known as the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L.; by aiding and condoning the act of the Associated Farmers of Kings County, Inc., a corporation in driving the pickets from in front of the Boswell plant on the morning of January 30, 1939; and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, Boswell Company, by dominating, coercing, and interfering with the formation and administration of the labor organization known as the J. G. Boswell Company Employees Association of Corcoran and Tipton (Independent), and by

aiding said Independent as set forth in the above findings of fact has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (2), and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent, Boswell Company, by refusing to reemploy James W. Gilmore on July 1, 1938, or any time thereafter; by the discharge of L. E. Ely, and locking out Boyd Ely and Walter Winslow from their employment by shutting down the oil mill; by discharging W. R. Johnson and Steven Griffin; by evicting from the respondent's plant and employment, through its employees and supervisory employees, by means of force and violence and threats of force and violence, George J. Andrade, Joe Briley, O. L. Farr, R. K. Martin, L. A. Spear, and H. N. Wingo; and by discharging E. C. Powell and Eugene Clark Ely, and by refusing to reinstate said individuals except for Joe Briley, to their former positions, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

4. Respondent, Associated Farmers of Kings County, Inc., a corporation, who acted directly and indirectly in the interest of the respondent Boswell Company, with the knowledge, aid, and condonement of the respondent Boswell Company, did, by means of force and violence and threats of force and violence, drive from the vicinity of the entrance

to respondent Boswell Company's plant at Corcoran, the union pickets established there by Local 21798, and did thereby interfere with, restrain, and coerce, and is interfering with, restraining, and coercing the employees of the respondent Boswell Company in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby engage in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

5. Respondent, Corcoran Telephone Exchange, by its various conversations with Mrs. Margaret A. Dunn regarding union matters, and by accepting and acting upon pressure being brought to bear upon it by officers and supervisory employees of the respondent Boswell Company, and by members of the Associated Farmers, and by its discharge of Mrs. Margaret A. Dunn, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

6. Respondent, Corcoran Telephone Exchange, by discharging and refusing to reemploy Mrs. Margaret A. Dunn, and acting directly and indirectly in the interest of respondent Boswell Company, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

7. Respondent, Corcoran Telephone Exchange,

by refusing to reemploy Margaret A. Dunn unless she withdrew her charges against said Exchange with the National Labor Relations Board, and acting directly and indirectly in the interest of the respondent Boswell Company, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (4) and Section 2 (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent, Boswell Company, cease and desist from interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist the labor organization known as Cotton Producers and Grain Mill Workers Union, Local 21798, A.F. of L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent, Boswell Company, cease and desist from:

- (a) discouraging membership in the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., or any other labor organization; and

- (b) dominating or interfering with the formation and administration of the J. G. Boswell Employees Association of Corcoran and Tipton, or any other labor organization, and from contributing financial or other support to the J. G. Boswell Em-

ployees Association of Corcoran and Tipton, or any other labor organization.

3. Respondent, Associated Farmers of Kings County, Inc., a corporation, cease and desist from interfering with, restraining, or coercing the employees of the Boswell Company, and members of the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., directly or indirectly in the interest of the respondent Boswell Company, or in any way individually or by concerted activity with the respondent Boswell Company, for the purpose of interfering with, restraining, or coercing the employees of the respondent Boswell Company, in the exercise of the right to self-organization, to form, join, or assist the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L. or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

4. Respondent, Corcoran Telephone Exchange, cease and desist from discouraging membership in the Cotton Producers and Grain Mill Workers Union, Local 21798, A. F. of L., or in any other labor organization, in its own interest, or directly or indirectly in the interest of the respondent Boswell Company.

5. Respondent, Corcoran Telephone Exchange, cease and desist from interfering with Margaret A. Dunn, or any other employee, because of the filing of charges against said respondent Corcoran Tele-

phone Exchange with the National Labor Relations Board.

6. In order to effectuate the policies of the Act, respondent Boswell Company take the following affirmative action:

(a) Withdraw all recognition from the J. G. Boswell Employees Association of Corcoran and Tipton as representative for the purpose of dealing with the respondent Boswell Company concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the above-named J. G. Boswell Employees Association of Corcoran and Tipton.

(b) Offer to James W. Gilmore, Boyd Ely, Walter Winslow, W. R. Johnson, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(c) Make whole the said James W. Gilmore, Boyd, Ely, Walter Winslow, W. R. Johnson, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely, for any losses of pay they may have suffered by reason of respondent's discrimination in regard to their hire and tenure of employment, by paying to each of them a sum of money equal to that which they would have earned as wages or salary during the period from the date of such discrimination to the date of offer of reinstatement

or date of reemployment, less their net earnings,²² during such periods;

(d) Post immediately in conspicuous places in its plant and maintain for a period of at least sixty (60) consecutive days, notice to its employees stating that respondent will cease and desist in the manner aforesaid; and that respondent's employees are free to become or remain members of the Cotton Producers and Grain Mill Workers Union, Local 21978, A. F. of L., and that the respondent will not discriminate against any employee because of membership or activity in that organization.

(e) Respondent, Corcoran Telephone Exchange, offer to Mrs. Margaret A. Dunn immediate and full reinstatement to her former position without prejudice to her seniority or other rights and privileges:

(f) Make whole Mrs. Margaret A. Dunn for any loss of pay she may have suffered by reason of respondent's discrimination in regard to her hire and tenure of employment, by paying to her a sum of money equal to that which she would have earned as wages or salary during the period from the date of such discrimination to the date of offer of rein-

²² By "net earnings" is meant earnings less expenses such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for respondent which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crosset Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590* 3 N.L.R.B. 440.

statement or date of reemployment, less her net earnings during such period.

(g) Post immediately in conspicuous places in its plant and maintain for a period of at least sixty (60) consecutive days, notice to its employees stating the respondent will cease and desist in the manner aforesaid;

(h) Respondents, Boswell Company, Associated Farmers of Kings County, Inc., a corporation, and the Corcoran Telephone Exchange, separately and individually, file with the Regional Director for the Twenty-first Region, on or before twenty (20) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which each of said respondents has complied with the foregoing recommendations.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents and each of them notify said Regional Director in writing that each of them will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring the respondents and each of them to take the action aforesaid.

It is further recommended that the complaint be dismissed as to Elmer Eller; and Joe Briley, that the allegation in the complaint that the respondent Associated Farmers circulated a list of members of the Union be dismissed for lack of proof thereof; that the allegation alleging violation of Section 8

(4) of the National Labor Relations Act against the respondent Boswell Company, and the respondent Associated Farmers of Kings County, Inc., a corporation, be dismissed for lack of proof thereof.

Request for permission to file briefs with or present oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on other issues upon which it is desired to file a brief or present oral argument must be made to the Board, Shoreham Building, Washington, D. C., within twenty (20) days after the date of the order transferring the same to the Board, as provided in Article II, Section 32 of the Rules and Regulations, Series 2, effective July 14, 1939.

JOHN T. LINDSAY,
Trial Examiner.

Dated: January 11, 1940.

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS

The respondents J. G. Boswell Company, a corporation, Associated Farmers of Kings County, Inc., a corporation, and Corcoran Telephone Exchange, a corporation, do, and each of them does hereby, present their exceptions to the record and Intermediate Report and proceedings in the above entitled matter under and pursuant to the provisions of Article II, Section 33 of National Labor Relations Board Rules and Regulations—Series 2.

The filing of these exceptions shall not be deemed to constitute a waiver of any rights, whether legal or equitable, of said respondents, or any or either of them, in the premises, and shall not be deemed to constitute any admission on the part of said respondents, or any or either of them, that said National Labor Relations Board has jurisdiction of the matters in controversy, or any thereof, but these exceptions are filed for the sole purpose of protecting and preserving the rights, if any, of each and all of said respondents in the premises, particularly in view of the provisions of Article II., Section 33 of the aforesaid Rules and Regulations which provides, among other things, that "No matter not included in a statement of exceptions may thereafter be objected to before the Board, and failure to file a statement of exceptions shall operate as a submission of the case to the Board on the record."

Said respondents do not, nor does either or any of them, intend, by the filing of these exceptions, to submit to the alleged jurisdiction of said Board in any particular.

For the sake of convenience and in order to conform with the procedure followed in the Intermediate Report, the National Labor Relations Act is herein referred to as the Act; the National Labor Relations Board as the Board; Cotton Products and Grain Mill Workers' Union, Local 21798, A. F. of L. as the Union; J. G. Boswell Company Employees' Association of Corcoran and Tipton as the Independent; J. G. Boswell Company, a corporation, as

Boswell Company; Associated Farmers of Kings County, Inc., a corporation, as Associated Farmers; and Corcoran Telephone Exchange, a corporation, as the Exchange.

Said respondents and each of them hereby refer to the transcript of testimony taken before the Trial Examiner at the hearing in the above case and said respondents and each of them hereby incorporate each and every part of said transcript as a part of these exceptions, the same as if included herein.

At the commencement of the hearing in this case the Trial Examiner ruled that the record would automatically show an exception on behalf of any party against whom any adverse ruling had been made, regardless of whether such party specifically requested an exception. (Tr. p. 26 lines 7 to 14, p. 28 lines 5 to 8, p. 2277 lines 8 to 12).

During the early part of said hearing, to-wit, on the first day thereof, it was specified that objections were being made on behalf of all respondents except where otherwise stated and it was requested that the record so show.

The Trial Examiner granted this request. (Tr. p. 82 lines 3 to 6).

Exception No. 2.

Respondents, and each of them, hereby except to the jurisdiction assumed by the Board over respondent Boswell Company, upon the following separate and independent grounds:

1. That there was no evidence showing, or tending to show, that said respondent now is or was

at any time engaged in interstate or foreign commerce within the meaning of the Act.

2. That there was no evidence whatever which showed or tended to show that said respondent was engaged in interstate or foreign commerce within the meaning of the Act at any time subsequent to June 30, 1938.

3. That there was no evidence which showed or tended to show that any act alleged to have been committed by said respondent, or to which it was alleged said respondent is or was a party, was in commerce, or affected commerce, or burdened or obstructed commerce or the free flow of commerce, or led, or tended to lead, to a labor dispute burdening or obstructing commerce or the free flow of commerce.

Respondents, and each of them, hereby specify the foregoing as Exception No. 2.

Exception No. 3.

Respondents, and each of them, hereby except to the jurisdiction assumed by the Board over respondent Exchange, upon the following separate and independent grounds:

1. That the evidence affirmatively established that the respondent Exchange is not and was not at any time engaged in interstate or foreign commerce, and that its operations do not and did not affect commerce within the meaning of the Act.

2. That the evidence affirmatively established that no labor dispute within the meaning of the Act existed between the Exchange and Margaret A. Dunn, or any other employee of the Exchange.

3. That the evidence affirmatively established that said Margaret A. Dunn was not a member of any labor organization within the meaning of the Act, and that she never in any manner assisted or attempted to assist any such labor organization.

Respondents, and each of them, hereby specify the foregoing as Exception No. 3.

Exception No. 4.

Respondents, and each of them, hereby except to each and every ruling against said respondents or any of them made by the Trial Examiner during the course of the hearing in this case and in the Intermediate Report herein.

Respondents, and each of them, hereby specify the foregoing as Exception No. 4.

Exception No. 5.

Respondents, and each of them, hereby except to each and all of the Findings contained in said Intermediate Report, except the portions of said Findings hereinafter designated, upon the ground that the evidence introduced and received at the hearing in this case is insufficient to support any of said findings except the following:

(a). The following portion of Finding No. 45, page 25 of the Intermediate Report:

“The undersigned finds that at the time Ely temporarily took over the job as head presser he was increased to 40 cents an hour and that when the head presser returned Ely was sent back to his former job as press helper and reduced to 35 cents per hour; that he only received the 40

cents per hour during the time he acted as head pressman for the reason that the job in question was rated at 40 cents per hour; that the reduction to 35 cents per hour was in the normal course of respondent's business and therefore Ely's reduction from 40 cents to 35 cents an hour was not because of union activities."

(b). The portion of Finding No. 89, page 44 of the Intermediate Report wherein it is found that the Complaint as to Elmer Eller should be dismissed.

(c). The portion of Finding No. 90, page 44 of the Intermediate Report wherein it is found that the Complaint as to Joe Briley should be dismissed.

(d). The portion of Finding No. 171, page 87 of the Intermediate Report wherein it is found that there is not substantial evidence to prove that the Associated Farmers of Kings County, Inc., a corporation, as such had taken any part in any action in exerting pressure to bear upon Mrs. Dunn to withdraw her charges filed against Corcoran Telephone Exchange, and wherein it is found that there is no substantial proof to show that the Associated Farmers of Kings County had authorized, either directly or indirectly, any action regarding the Dunn discharge.

(e). The portion of Finding No. 176 wherein it is found that there is no substantial evidence to prove that respondent Boswell Company as such, either directly or indirectly, authorized any action to bring pressure to bear upon Mrs. Margaret Dunn

to withdraw her charges against respondent, Corcoran Telephone Exchange, and the following portion of said Finding No. 176, to-wit:

“Therefore, the undersigned finds that the respondent Boswell Company cannot be held to have violated Section 8 (4) of the Act.”

Respondents, and each of them, hereby specify the foregoing as Exception No. 5.

Exception No. 6.

Respondents, and each of them, hereby except to each and all of the Conclusions of the Trial Examiner set forth in said Intermediate Report, upon the following grounds, to wit:

1. That each, every, and all of such Conclusions are based upon improper and unfounded Findings of fact;

2. That none of such Conclusions is supported by the Findings of Fact, or any thereof; and

3. That the evidence adduced at the hearing herein is insufficient to support all or any of the material allegations contained in the amended complaint or in the original complaint in this matter.

Respondents, and each of them, specify the foregoing as Exception No. 6.

Exception No. 7.

Respondents, and each of them, hereby except to each and all of the recommendations of the Trial Examiner contained in said Intermediate Report, with the exception of the following portion thereof, on page 96 of the Intermediate Report, to-wit:

“it is further recommended that the complaint be dismissed as to Elmer Eller; and Joe Briley, that the allegation in the complaint that the respondent Associated Farmers circulated a list of members of the Union be dismissed for lack of proof thereof; that the allegation alleging violation of Section 8 (4) of the National Labor Relations Act against the respondent Boswell Company, and the respondent Associated Farmers of Kings County, Inc., a corporation, be dismissed for lack of proof thereof.”

upon the ground that each and every one of said recommendations, with the above exception, is based upon improper and unfounded Findings of Fact and Conclusions and none of said recommendations are warranted or supported by the evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 7.

Exception No. 8.

Before the introduction of any testimony at the hearing in this case all of the respondents objected to the introduction in evidence by Board's counsel of the charge of Margaret A. Dunn against the Exchange (Board's Exhibit No. 1 (q) the jurat of which charge bears date March 13, 1939), on the ground that said charge had never been served upon any of the respondents; that the only charge served on any of the respondents concerning the Exchange or Margaret A. Dunn was that contained in the fourth amended charge, a copy of which was served with the amended complaint issued May 6, 1939; that the

fourth amended charge was made by E. F. Prior as business representative of the Union; that there was no showing or allegation that Margaret A. Dunn was or intended to become a member of the Union, or that she had engaged in any union activities or had any connection whatsoever with any union; and that there was no authority shown or alleged for E. F. Prior to act in any respect for her in the filing of the fourth amended charge. Further objection was made on the ground of incompetency and irrelevancy (tr. 7-13, and 28-34). The Trial Examiner erroneously overruled the objections and admitted said charge of March 13, 1939 in evidence (tr. 34-35) and respondents excepted thereto. All of the respondents hereby except to such ruling as Exception No. 8.

Exception No. 9.

Respondents, and each of them, hereby except to the admission in evidence, over respondents' objection, of the fourth amended charge dated May 4, 1939, as Board's Exhibit No. 1(R), insofar as said charge concerns Margaret A. Dunn and the Exchange, upon all of the grounds specified in Exception No. 8, excepting, however, no claim is made that a copy of the fourth amended charge was not served upon the respondents.

Respondents duly interposed objections to the introduction of said exhibit on the foregoing grounds and said objections were erroneously overruled by the Trial Examiner (tr. pages 13, 14; pages 21 to 23; pages 28 to 35). Respondents duly excepted thereto.

All of said respondents hereby except to such ruling as Exception No. 9.

Exception No. 10.

Respondents, and each of them, hereby except to the admission in evidence of the amended complaint as Board's Exhibit No. 1(S), insofar as it relates to the allegations concerning Margaret A. Dunn, on the same grounds previously specified in Exceptions Nos. 8 and 9.

Respondents duly objected to the introduction of said Exhibit on the foregoing grounds, and the Trial Examiner erroneously overruled said objections and admitted the complaint in evidence in its entirety (tr. pages 14; pages 21 to 23; pages 28 to 35). Respondents duly excepted thereto.

All of the respondents hereby except to such ruling as Exception No. 10.

Exception No. 12.

Prior to the hearing of this case the respondent Boswell Company filed with the Regional Director of the Board for the Twenty-First Region a written motion to dismiss said proceeding as to said respondent and to dismiss the charges on file against said respondent. (Board Exhibit No. 1-DD). Said motion was made upon the ground that no act of said respondent or to which said respondent is a party is in commerce or affects commerce, or burdens or obstructs commerce or the free flow of commerce, or has led or tended to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; and upon the further ground that the Board has no jurisdiction over said respondent. Thereafter before the introduction of any testimony at the hear-

ing in this case the Trial Examiner erroneously denied said motion to dismiss (tr. 28) and said respondent Boswell Company duly excepted thereto. Said respondent hereby excepts to the denial of said motion and specifies such denial as Exception No. 12.

Exception No. 14.

Prior to the hearing of this case the respondent Exchange also filed with the Regional Director of the Board for the Twenty-First Region a written motion to dismiss said proceeding as to said respondent and to dismiss the charge on file against said respondent. (Board Exhibit No. 1-CC). Said motion was made upon the same grounds as the motion made by respondent Boswell Company hereinabove mentioned. Thereafter before the introduction of any testimony at the hearing in this case the Trial Examiner erroneously denied the motion to dismiss (tr. 28) and said respondent Exchange duly excepted thereto. Said respondent hereby excepts to the denial of said motion and specifies such denial as Exception No. 14.

Exception No. 17.

Respondents, and each of them, hereby except to the ruling of the Trial Examiner, overruling the objections of said respondents to the reception of any evidence in support of the allegations contained in the fourth amended charge and the amended complaint relating to the Exchange, upon the grounds that the charge filed by Mrs. Dunn with the Board on March 14, 1939 (Board's Exhibit No. 1-Q) was not served upon any of the respondents;

that there was no connection shown between Mrs. Dunn and Mr. Prior, and no authority shown from Mrs. Dunn to Mr. Prior, to file on her behalf the fourth amended charge upon which the amended complaint was issued; and that there was no proof shown which would support the Board taking jurisdiction over the Exchange. Said objections were duly made by respondents, and each of them, prior to the introduction of any testimony in support of the Board's alleged case against the Exchange, (Tr. 1058-1060; Tr. 7-14), and the Trial Examiner erroneously overruled said objections and permitted the introduction of such testimony, to which said respondents, and each of them, duly excepted.

Said respondents, and each of them, hereby specify the foregoing ruling as Exception No. 17.

Exception No. 18.

Respondent Associated Farmers hereby excepts to the ruling of the Trial Examiner, overruling the objection of said respondent to the reception of any evidence in support of the allegations contained in the fourth amended charge and the amended complaint relating to the Exchange, upon the ground that neither the fourth amended charge nor the amended complaint contain any claim or allegation that respondent Associated Farmers acted in the interest of the Exchange or acted as an "employer" in connection with the Exchange within the meaning of the Act. Said objection was duly made by said respondent prior to the introduction of any testimony regarding the Board's alleged case

against the Exchange. (Tr. 1058-1060). The Trial Examiner erroneously overruled said objection and permitted the introduction of such testimony, to which said respondent duly excepted.

Respondent Associated Farmers hereby excepts to the reception, over the objection of said respondent, of evidence under the Fourth Amended Charge and in support of the allegations of the Amended Complaint relating to the Exchange, upon the ground that nowhere in the complaint is it alleged that said respondent Associated Farmers acted in any respect in the interests of the Exchange, or acted as an "employer" in connection with the Exchange, within the meaning of the Act. During the hearing, when Mr. C. H. Glenn was first called by the Board as a witness, respondent Associated Farmers duly interposed an objection to the reception of any such evidence on the foregoing grounds.

The Trial Examiner stated that there was no question pending at that time which touched upon any testimony, and that the "motion" might stand in the record and he would rule on it when the occasion arose. It was stipulated that the objection might run to Mr. Glenn's entire testimony. The Trial Examiner never ruled upon said objection, but permitted Board's counsel to continue with the examination of the witness. (Tr. 1984-6). Respondent Associated Farmers hereby excepts to the failure and refusal of the Trial Examiner to rule upon such objection, and to the reception of the evidence

in support of the allegations of the Complaint relating to the Corcoran Telephone Exchange after such objections had been made.

Said respondent Associated Farmers hereby specifies all of the foregoing as Exception No. 18.

Exception No. 20.

Respondents, and each of them, hereby except to the ruling of the Trial Examiner in granting the motion of Board's counsel, over the objection of Respondents, for permission to amend Paragraph 8 of the Amended Complaint, so as to include an additional alleged discrimination against James W. Gilmore, who was not theretofore mentioned in said Amended Complaint, upon the ground that the motion of counsel for the Board to amend the Amended Complaint came too late, since it was not served upon any of the respondents within any reasonable time prior to the commencement of the hearing. Said motion to amend was made by counsel for the Board upon the sixth day of the hearing, and after the said James W. Gilmore had been called as a witness by the Board, and had been sworn and placed on the witness stand, and had given some testimony. Respondents, and each of them, duly objected to said motion to amend upon the grounds hereinabove stated, and the Trial Examiner erroneously granted said motion to amend (tr. pages 843 to 847). Respondents, and each of them, duly excepted thereto. After granting this motion, the witness was withdrawn from the witness stand, his testimony was stricken and he was later recalled

and testified to alleged discriminations against him, after the Respondents had each filed answers to said amendment to the Amended Complaint. The Respondents, and each of them, hereby specify the foregoing ruling as Exception No. 20.

Exception No. 22.

Respondent Exchange hereby excepts to the ruling of the Trial Examiner denying its motion to dismiss the Amended Complaint and the charge upon which said amended complaint was based, which motion was made at the conclusion of the Board's alleged case against said Respondent Exchange, upon the following grounds:

1. That no jurisdiction of the Board over said Respondent had been established, in that the evidence failed to show that said Respondent was engaged in interstate commerce, or in any business substantially affecting interstate commerce, or in which a labor situation could affect interstate commerce, within the meaning of the Act, as construed by the courts.

2. That Mrs. Dunn herself testified that she was not a member of any labor organization and had never engaged in any union activities, and that, therefore, she was not entitled to any redress under the Act.

(tr. p. 2195). Said motion to dismiss was erroneously denied by the Trial Examiner and said Respondent duly excepted thereto (tr. p. 2197). The Respondent Exchange hereby excepts to the fore-

going ruling of the Trial Examiner and specifies the same as Exception No. 22.

Exception No. 23.

Said respondents and each of them except to the manner in which the hearing in this case was conducted by the Trial Examiner as disclosed by the record, which shows:

(a) That the hearing was not conducted in a fair and impartial manner, but on the contrary the Trial Examiner throughout the entire hearing showed marked bias and prejudice in favor of the Union and Board's counsel and case, and against respondents and their counsel and case.

(b) That throughout the entire hearing the Trial Examiner displayed animosity toward counsel for respondents and frequently and repeatedly during the course of the hearing became angry with and argued with respondents' counsel, and several times threatened to bar such counsel from further participation in the hearing, without any reason, cause or justification whatsoever for such conduct or acts on the part of the Trial Examiner.

A few examples of the conduct of the Trial Examiner, referred to in the foregoing paragraphs (a) and (b), are shown by the proceedings which appear in the following portions of the transcript: Pages 2811 to 2816; 635 and 636; 358 to 362; 376 to 379; 416 and 417; 448 and 449; 453 to 457; 926 and 927; 956 to 958; 1342 to 1344; and 2106.

(c) The Trial Examiner showed a hostile attitude toward witnesses called by respondents, and a

friendly attitude toward witnesses called by the Board. In numerous instances he cross examined and argued with witnesses called by respondents. He rarely examined the witnesses called by the Board, and when he did his examination was in the nature of a friendly and leading examination.

For example, after E. C. Powell, one of the witnesses called by the Board, had been thoroughly impeached and discredited, the Trial Examiner attempted, by leading and suggestive questions, to rehabilitate him. One of the respects in which Powell had been impeached was his admission that he had been convicted of a felony for which he had been imprisoned as one of the conditions of probation. He testified to certain details of his conviction directly contrary to the Official Reporter's transcript in the criminal proceeding in question (Boswell's Exhibit No. 21). After he was impeached by the official reporter's transcript in that proceeding, the Trial Examiner endeavored by leading questions to elicit testimony from Powell to the effect that he had been improperly and unfairly treated and convicted, and had not been advised of his legal rights, when, in fact, the official reporter's transcript in that proceeding showed conclusively that he had been properly informed of his rights and fairly and properly tried and convicted (tr. pages 662 to 667 and 681 to 685).

Another instance when the Examiner questioned one of the Board's witnesses, was during the testimony of Johnston (tr. pages 252 to 254).

Some of the examples of the numerous instances of hostile cross examination of, and argument with, witnesses called by the respondents are the following:

C. H. Glem (tr. pages 2019 to 2022, and 2088 and 2089);

Harold E. Botts (tr. pages 2385 to 2397);

Blakely G. Crary (tr. pages 2898 and 2899);

Samuel Brenes (tr. 1975 and 1976);

James W. Woodruff (tr. pages 2913 to 2915);

J. B. Boyett (tr. pages 2782 and 2784);

Louis T. Robinson (tr. pages 2369 and 2459 to 2465);

James W. Hubbard (tr. page 1815);

George H. Cutter (tr. page 1647);

George W. Bell (tr. pages 2219 to 2221);

John A. Case (tr. pages 2257 to 2259); and

Roger R. Walch (tr. pages 208 and 209).

(d) The Trial Examiner repeatedly during the hearing made statements off the record, which properly belong therein. In several instances such statements were made over the objection of respondents. During the numerous off the record discussions which took place at the order of the Trial Examiner, he made statements which clearly revealed his bias and his animosity toward respondents, and severely criticized counsel for respondents without any cause therefor. In at least one instance, his ruling upon an objection was made during one of these off the record discussions, and such ruling does not appear in the transcript (tr. page 249,

line 2; page 250, line 18). Also during some of these off the record discussions, the Trial Examiner became angry with counsel for respondents, so that the true nature of the proceedings and the actual attitude of the Examiner is not correctly shown by the record.

(e) That the Trial Examiner in his rulings upon motions and objections to admissibility of evidence improperly and unfairly favored Board's counsel and case and consistently ruled improperly and unfairly against the respondents and their respective counsel and cases.

(f) E. F. Prior, business representative of the Union was present throughout practically the entire hearing and although he was not an attorney in the proceeding, he was permitted by the Trial Examiner to sit, and did sit, at the table of Board's counsel and from his actions and conduct it was apparent that he was aiding and assisting Board's counsel in the presentation of the Board's case against respondents. Upon numerous occasions during the hearing the Trial Examiner requested all counsel to come to his bench so he could discuss certain matters with them off the record and on such occasions said E. F. Prior, although he was a witness for the Board and was not counsel for any of the parties to the proceeding, always went forward and was permitted by the Trial Examiner to participate in such discussions at the bench.

Respondents, and each of them, hereby specify the foregoing acts and conduct of the Trial Examiner an Exception No. 23.

Exception No. 24.

Respondents, and each of them, hereby except to the bias and prejudice of the Trial Examiner as shown by the Intermediate Report, and except to the acceptance by the Trial Examiner as facts in the Intermediate Report of extravagant and incredible statements by Union and Board witnesses and his complete disregard of the cross-examination of said witnesses and the testimony of respondents' witnesses upon the same subject.

The record shows that the majority of the findings contained in the Intermediate Report of the Trial Examiner are taken in their entirety from the direct examination of Union and Board witnesses regardless of their credibility. The Trial Examiner has displayed his bias by the fact that he has disregarded or ignored all of the testimony adduced by respondents and by the fact that all intendments and inferences have been construed by him against respondents and in favor of the Union. The foregoing clearly indicates the Trial Examiner's determination to support the Union charges regardless of their factual soundness in proof.

Respondents, and each of them, specify the foregoing as Exception No. 24.

Exception No. 25.

Respondents, and each of them, hereby except to the statements set forth on pages 1 to 8, inclusive, of the Intermediate Report, upon the ground that such statements are incorrect, incomplete, and misleading in the following respects and particulars, to-wit:

1. It is stated in lines 1 and 2, page 1, that
“On November 21, 1938, the California State
Council of Soap and Edible Oil Workers, A.
F. of L., filed charges . . . ”

Said statement is an incorrect statement of the record. The record shows that said charges hereinabove referred to (Board's Exhibit 1-B) were never served upon any of the respondents, and were filed by E. F. Prior on behalf of Cotton Products and Grain Mill Workers Union, Local 21798, A. F. of L. (Tr. p. 4). The undisputed evidence also shows that said California State Council of Soap and Edible Oil Workers has never obtained a charter from the American Federation of Labor, and is in no way connected with the American Federation of Labor. (Tr. p. 392, p. 513).

2. It is stated in paragraph 2, page 2, of the Intermediate Report that

“The amended complaint, which will hereinafter be more fully discussed, the charges and notice of hearing herein were duly served upon the respondents, the Union, and the J. G. Boswell Employees Association of Corcoran and Tipton”

Said statement is an incorrect statement of fact and is misleading. The evidence shows that neither said original charge filed November 21, 1938, nor said amended charge, nor said second amended charge, nor the charge filed by Margaret A. Dunn, was served at any time upon these respondents, or any of them.

3. It is stated on page 3 of the Intermediate Report that the amended complaint alleged, among other things,

“that on or about January 20, 1939, respondent discharged Eugene Clark Ely”

This is an incorrect statement of the allegation contained in said amended complaint. Said amended complaint (Paragraph 8) alleged that on or about January 30, 1939, respondent Boswell Company discharged Eugene Clark Ely.

4. The Trial Examiner entirely omitted any reference to the allegation contained in Paragraph 20 of the amended complaint that

“on or about January 20, 1939, the Union instituted a boycott of Respondent’s (Boswell Company) products, and stationed pickets at Respondent’s Corcoran plant, and said activities are being carried on at the present time.”

5. The portion of said statement purporting to summarize the answer to the amended complaint herein on behalf of Respondent Associated Farmers (page 5, paragraph two of said Intermediate Report) is an erroneous summary of the contents of the said answer. In its answer the said Respondent admitted and alleged its corporate organization, admitted the corporate organization of Respondent Boswell Company and that Respondent Boswell Company was engaged in the general type of business set forth in paragraph 1 of the Amended Complaint, it denied specifically the allegation re-

lating to alleged unfair labor practices by said respondent, and it denied, for lack of knowledge thereof, all of the allegations in said amended complaint relating solely to respondent Boswell Company and Respondent Exchange.

6. It is stated in line 2, page 6 of the Intermediate Report that the hearing was conducted from May 17 to June 16, 1939. This is an incorrect statement of fact. The record shows that the hearing commenced May 18, 1939 and was concluded June 16, 1939.

7. The Trial Examiner, in the last paragraph on page 6 of the Intermediate Report, purports to quote paragraph 8 of the Amended Complaint as amended during the course of the hearing. However, as shown by the record, this quotation is not in accordance with the record. For instance, the date of Gilmore's alleged discharge as stated in the Intermediate Report is stated as on or about March 30th, whereas the record shows it was on or about March 20, 1938.

It is also stated in the first paragraph on page 7 of the Intermediate Report, that

“the Respondents waived the right of the five (5) days as to W. R. Johnson, Steven J. Griffen, Elmer Eller, and amended their answers to meet the new charges”.

This is an incorrect statement of the record. The record shows that none of the Respondents waived any such right (Tr. pp. 843 and p. 851), and that

they, and each of them, duly served and filed written answers to the amendment to paragraph 8 of the Amended Complaint (Board Exhibits Nos. 1 (KK), and 1 (MM); Tr. pp. 1251 to 1254.)

8. It is stated in lines 4 to 6, page 7 of the Intermediate Report, that

“During the hearing counsel for the Exchange; first moved to strike testimony from the record on page 2283, line 8 to page 2286 line 6 of the transcript of June 10, 1939”.

Said statement is an incorrect statement of the record. The record shows that the motion to strike such testimony was made on behalf of all respondents (Tr. p. 2917) and was not limited to respondent Exchange.

Respondents, and each of them, specify all of the foregoing as Exception No. 25.

Exception No. 28.

Said Respondents, and each of them, hereby except to the whole of Finding No. 6, pages 9 and 10 of the Intermediate Report, except the statement therein contained that Respondent Boswell Company owns and controls and operates J. G. Boswell Farm Loan Company, and that the said Loan Company finances various farmers in that community during the growing season, upon the ground that the portions of said Finding to which exception is taken as aforesaid are not supported by any testimony or evidence, and are contrary to the testimony and evidence adduced at the hearing. No

evidence was introduced relating to respondent Boswell's general practice and method of financing farmers.

The only evidence in the record respecting either the financing of farming operations or the conduct of farming operations by the Respondent Boswell Company, or its financing agency known as the J. G. Boswell Farm Loan Company, consisted of testimony regarding isolated instances, which testimony was given by the following witnesses, to wit:

Louis T. Robinson, who testified that, subject to approval by the head office, loans are made to farmers in the vicinity of Corcoran through J. G. Boswell Farm Loan Company. He testified that they financed Mr. Salyer on a large acreage of grain and a rather large acreage of cotton, and at the time of the hearing had loaned him about \$8.00 on his grain and had agreed to loan him around \$20.00 an acre on his cotton, and that the necessary funds to produce his crop are loaned as the work of producing the crop progresses (tr. 2452-5).

E. C. Salyer, who testified he had had financial dealings with respondent Boswell Company and that he sells some of the products of his farm to them—most of the cotton; also that he was indebted to them in some amount (tr. 1572-5).

The only evidence relating to the method of financing was the testimony of C. H. Glenn who, over the objection of respondents, testified regarding the manner in which his particular finances are handled. He testified that before he begins crop-

ping he makes his budgets for grain and cotton and submits those to respondent Boswell Company and makes arrangements with them to finance the crops according to those budgets; that he draws the money as he needs it, that it is partially paid to him, that part of the bills are approved by him and are then sent to the Company who pays them, and that the Boswell Company issues checks to Glenn to pay his payroll and he distributes the money (Tr. pgs. 2003 to 2008). This testimony regarding the manner of handling Glenn's financing was erroneously introduced over the objections of respondents (Tr. p. 2006, l. 14 to l. 20, p. 2007, l. 14 to l. 25), upon the grounds that said evidence was incompetent, irrelevant and immaterial. Said respondents, and each of them, duly excepted to the overruling of said objections and the introduction of such testimony into the record and do hereby except thereto. The record shows that all of the foregoing testimony by Glenn related to his particular financing problems and in no way dealt with the practice and custom of respondent Boswell Company.

J. B. Boyett who testified that he never dealt with the Boswell Company directly; that he was financed from time to time by San Joaquin Cotton Company, a competitor of the Boswell Company (Tr. p. 1468); that he was a stockholder in a small farming corporation which ginned its cotton at the Boswell gin, but that he did not know whether it sold any cotton to the Boswell Company during the last three years and he paid very little attention to it. He

testified that he didn't know whether the said corporation was financed by the Boswell Company but it had been sometimes in the past (Tr. pgs. 1469 and 1470).

Walter Grisham, who testified that he farms one of Mr. J. G. Boswell's farms by contract under which Mr. Boswell owns the crop (tr. 1801-2).

James W. Hubbard, who testified he works for respondent Boswell Company and looks after the Company's farms (tr. 1806); that he furnishes advice as to how to operate these farms with respect to the performance of the normal farming operations and advises the foremen therein how to operate the farms; that in the early part of 1939 the Company had one contractor and two foremen on its ranches (tr. 1814-16).

The only evidence respecting irrigation was the testimony of John Arthur Case, who testified he is a civil engineer employed by Boswell Company (tr. 2242); that he prepares and takes measurements of water delivered to the Company from the Peoples Canal and Melga Canal and also prepares estimates and supervises installation of pumps and other engineering data that is required (tr. 2246).

There was no testimony or evidence whatever to support the statement in said Finding that the financed crop, when harvested, is delivered to the Boswell Company at a designated price, or at any price, or that the Boswell Company controls, operates, or manages a number of farm ranches upon which are placed foremen who direct the operation

of the ranch for the Company. The evidence shows, as above mentioned, that in 1939, the Boswell Company operated only three ranches, all of which were either owned or held by it under lease, and that of these three ranches two thereof were operated through foremen, and the third ranch was operated by a contractor.

There was absolutely no evidence whatever to support the statement in said Finding that Boswell Company controls the water supply and charges the farmer \$8.00 or any amount for each irrigation or watering, or that it sells or furnishes water to anyone, or provides any water for any farm or farms except those operated by it.

Contrary to the statement in said Finding, no evidence was introduced regarding the payment by the Boswell Company of the employees of any farmer. The only evidence on this matter was the testimony of Mr. Glenn, who testified that in the financing of his operations he receives the money from the Company and pays his employees.

Respondents, and each of them, specify all of the foregoing as Exception No. 28.

Exception No. 30.

Respondents, and each of them, hereby except to all of Finding No. 8, page 11 of the Intermediate Report, except the Finding as to the corporate existence of said Respondent Exchange and that C. H. Glenn is now its duly elected president and principal stockholder, upon the ground that all of said Finding, excepting the aforementioned portions

thereof which are not herein excepted to, are unsupported by, and are contrary to, the evidence, and upon the further ground that the evidence with respect to the portions hereby excepted to is not fully or accurately stated.

The evidence affirmatively shows that the Exchange is a purely local concern; that its business and operations are limited to the City of Corcoran, California, (tr. pp. 1987 and 2009); that it has only about 300 subscribers (tr. p. 2019); that it has what is known as an independent telephone connection agreement with the Pacific Telephone and Telegraph Company, whereby the Exchange receives 30% of tolls on outgoing calls and the Pacific Telephone and Telegraph Company receives the remaining 70%, and the Exchange does not receive anything on incoming calls (tr. 1998) unless they happen to be collect calls; that the only connection between the Exchange and Pacific Telephone and Telegraph Company, aside from the aforementioned independent telephone connection agreement is certain cables owned, installed, and maintained by Pacific Telephone and Telegraph Company, which cables come in through the rear of the building in which the office of the Exchange is located to the back of the switchboard and the wires in which cables are attached to the back of the switchboard by solder. That these cables are owned entirely by Pacific Telephone and Telegraph Company and the Exchange has nothing whatever to do with the maintenance and repair thereof (tr. 2798-9). This

is the only means by which the Exchange places long distance calls with Pacific Telephone and Telegraph Company through the Hanford office of the last named company. The evidence clearly established that the Exchange is a purely local, independent concern, and that it is not in anywise an integral part, or any part, of the Pacific Telephone and Telegraph Company. There is absolutely no evidence to support the statement contained in said Finding that the Exchange maintains the only telephone service in Corcoran, and that without its connection with the Pacific Telephone and Telegraph Company long distance service to and from that community would be shut off.

The undisputed evidence shows on the contrary:

1. The Pacific Telephone and Telegraph Company maintains a cable containing six or seven wires into the City of Corcoran from points outside of the City;

2. Respondent Exchange neither owns nor maintains any cable or telephone facilities outside of the City limits of Corcoran;

3. The Pacific Telephone and Telegraph Company is a separate and independent company having no relation with Respondent Exchange.

The respondents at the time of the hearing objected to the introduction in evidence of the annual report of the Pacific Telephone and Telegraph Company, and the annual report of American Telephone and Telegraph Company (Board's Exhibit

No. 20 (a) and (b),) upon the ground that each of said exhibits was incompetent, irrelevant, and immaterial, and hearsay as to all respondents, and upon the further ground that there had been no showing whatsoever concerning the Board's jurisdiction over the respondent Exchange, or that said respondent acted in the interests of anyone who is subject to the Board's jurisdiction, or is an employer within the meaning of the Act, and upon the further ground that there was no connection shown between the Exchange and either of the companies mentioned in said Exhibits, to wit, the American Telephone and Telegraph Company or the Pacific Telephone and Telegraph Company. The Trial Examiner erroneously overruled the objections and admitted said Exhibits in evidence, and an exception was taken thereto. (tr. 1992). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objections.

Respondents, and each of them, hereby except to all of the foregoing and specify the same as Exception No. 30.

No. 31.

Respondents, and each of them, hereby except to Finding No. 9, page 12 of the Intermediate Report, on the ground that said Finding is not supported by the evidence and does not fully or properly state the evidence with respect to the matters therein mentioned. The undisputed evidence shows that all equipment, cables, wire, poles and other mate-

rial purchased by the Exchange is ordered and purchased from dealers within the State of California (tr. pp. 2018-20), and that the Exchange neither ordered nor purchased any equipment or material outside the State of California. Respondents, and each of them, specify the foregoing as Exception No. 31.

Exception No. 32.

Respondents and each of them hereby except to Finding No. 10, page 12 of the Intermediate Report, on the ground certain of the statements therein contained and hereinafter referred to are either not supported by or are contrary to the evidence, or do not fully state the evidence on the matters therein mentioned.

It is stated in said finding that of the sum of \$5,248.48 received by the Exchange for out-of-town calls, long distance calls outside of the state amounted to \$177.13. This is contrary to the evidence as the undisputed evidence showed that said sum of \$177.13 was the total amount of tolls for long distance calls outside the state during the one year period and that of this sum the Exchange, under the terms of its independent agreement with the Pacific Telephone and Telegraph Company actually received only 30% of said amount (tr. 2013).

It is also stated in said finding that during the one year period in question the total number of calls which went through the Exchange was 35,588. The evidence shows that this was merely the total number of toll calls and did not include any of the

innumerable local calls, no record as to the number of which was kept. (tr. 2015).

It is also stated in said finding that without the connection of the Exchange with the Pacific Telephone and Telegraph Company long distance calls from Coreoran would be impossible. This statement is not supported by any evidence whatever.

It is also stated in said finding that some of the larger subscribers to the Exchange are the J. G. Boswell Company, the Atchison, Topeka & Santa Fe Railroad and the Western Union Company. Such statement is misleading and is not supported by the evidence, except as to J. G. Boswell Company. The evidence showed that the Exchange does not have any agreements or any working agreements with the Western Union Company and does not serve said Company in any way at all; that if a person desired to send a telegram and phoned it into the office of the Exchange, they would not take it but it would be taken at the Santa Fe; that no telegraph messages are relayed by the Exchange over its system, (tr. 1999-2001). The Western Union Company and the Atchison, Topeka & Santa Fe Railroad each subscribes to the Exchange, but there was no showing whatever in the evidence concerning the volume of business received by the Exchange from these two subscribers or that they or either of them were large subscribers.

When Mr. C. H. Glenn was called by the Board as a witness, he was asked if the Western Union Company is a subscriber to the Telephone Ex-

change, and answered that it was, and he was also asked if the Atchison, Topeka & Santa Fe Railroad was a subscriber, and stated it was. The respondents moved to strike both of these answers, upon the ground they were incompetent, irrelevant and immaterial, upon the theory that it makes no difference who the subscribers are so far as establishing whether or not the respondent Exchange is engaged in interstate commerce. This motion to strike was denied by the Trial Examiner, and an exception taken thereto (tr. 2002-3). The respondents, and each of them, hereby except to the denial of such motion upon the grounds above stated which were urged in support of such motion.

The respondents, and each of them, specify all of the foregoing as Exception No. 32.

Exception No. 33.

Respondents, and each of them, hereby except to the following portion of Finding No. 11, pages 12 and 13 of the Intermediate Report, to-wit:

“Cotton Producers and Grain Mill Workers’ Union * * * admits to membership, employees of other companies doing like and similar work * * *”

upon the ground that said portion of said Finding is not supported by any evidence. E. F. Prior, the union organizer, was specifically questioned regarding the jurisdiction of certain local unions organized by him so far as admissibility or eligibility to membership is concerned, but counsel for the Board interposed an objection to said question, which was

erroneously sustained by the Trial Examiner (Tr. pgs. 393, 394), and respondents and each of them duly excepted thereto. On numerous occasions at the hearing counsel for the Board objected to all questions regarding the names of members of the union and regarding persons eligible for membership thereon. On each of said occasions the Trial Examiner erroneously sustained said objections and respondents and each of them duly excepted thereto.

Respondents, and each of them, hereby except to all of the foregoing rulings and hereby specify all of the foregoing as Exception No. 33.

Exception No. 34.

Respondents, and each of them, except to the following portion of Finding No. 12, page 13 of the Intermediate Report, to wit:

“The operations of respondent Boswell are
* * * dependent wholly on the volume of cotton
produced by the farmers who are its customers”

upon the ground that said portion of said Finding is unsupported by and is contrary to the evidence. The evidence shows that respondent Boswell Company is engaged in farming operations and the growing of cotton and other farm produce and also operates a cattle feeding business (Tr. pgs. 39, 40, 1814).

Respondents, and each of them, hereby specify the foregoing as Exception No. 34.

Exception No. 35.

Respondents, and each of them, hereby except to the portion of Finding No. 13, page 13, wherein it

describes the 1937-1938 season as a "heavy" season, upon the ground that said portion of said Finding is unsupported by the evidence and is misleading. There was no evidence that the 1937-1938 season was any heavier than any normal season. On the contrary, the evidence showed that the 1938-1939 season, which includes the period of time here in question, was a very short season and much below normal because of the flood and the government crop control program (Tr. p. 2403, 2404; p. 2400, pgs. 940, 941).

Respondents, and each of them, hereby specify the foregoing as Exception No. 35.

Exception No. 36.

Respondents, and each of them, except to Finding No. 14, page 13, of the Intermediate Report, upon the ground that said Finding is an inaccurate and incomplete statement of the evidence relating to the operation of gins during the 1938-1939 season. The evidence shows that there are six gins at the Boswell plant at Corcoran. They are numbered from 1 to 6 (Tr. pgs. 2533, 2534). Only four of the gins were operated during said season. They were operated only during one shift and were not operated continuously. Stipulations made by counsel for the Board and uncontradicted evidence shows that the gins operated as follows during said season:

No. 1 gin started September 30, 1938 and closed December 5, 1938. Thereafter it ran part time until December 30, 1938. About one-

half of the days during the period from December 5, 1938 to December 30, 1938 said gin was not operating at all and some times during said period it operated only two or three hours or half a day (Tr. pgs. 2546, 2547)

No. 2 gin started on October 3, 1938 and closed December 3, 1938 and did not operate thereafter (Tr. pgs. 2547, 2548).

No. 3 gin started October 1, 1938 and closed January 24, 1939 but did not operate continuously during that time. Some days in January it didn't operate at all and some days during that month it ran only part-time because there was no cotton brought in (Tr. pgs. 2548, 2549).

No. 4 gin started October 3, 1938 and closed November 25, 1938 and did not operate thereafter. During this period there were some Sundays when this gin did not operate at all and also some days when it didn't operate twelve hours because of the lack of cotton (Tr. p. 2549).

Respondents, and each of them, hereby specify the foregoing as Exception No. 36.

Exception No. 37.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following uncontradicted and relevant evidence:

During the 1937-1938 season all six gins at the Boswell Company operated steadily twenty-

four hours a day with two twelve-hour shifts (Tr. p. 2534). Some of the gins started on September 20, 1937, and less than a week later all six gins were operating (Tr. p. 2534). All six gins operated until around the middle of December, 1937, at which time two of the gins were closed (Tr. pgs. 2534, 2535). The remaining four gins operated until around the middle of January, 1938, at which time two of said gins were closed (Tr. p. 2535). Thereafter for two or three weeks two gins were operated, at the end of which time one gin was closed (Tr. pg. 2535). The remaining gin operated until the end of the season in the latter part of February (Tr. pgs. 2536, 2537) which was the end of the 1937-1938 ginning season.

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 37.

Exception No. 38.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following relevant evidence, the correctness of which was stipulated to by counsel for the Board.

During the 1937-1938 season the total number of bales of cotton ginned at Corcoran was 47,250 (Tr. p. 2544). During the 1938-1939 season the total number of bales ginned at Corcoran was 9,944 (Tr. p. 2544).

The number of bales of cotton ginned on the one day of November 17, 1937 was 468 (Tr. pgs. 2549, 2550).

The number of bales of cotton ginned on the one day November 17, 1938 was 167 (Tr. p. 2550).

The total number of bales of cotton ginned during the 1937-1938 season, to and including November 17, 1937, was 25,558 (Tr. p. 2550).

The total number of bales ginned during the 1938-1939 season, to and including November 17, 1938, was 6,785 (Tr. p. 2550).

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 38.

Exception No. 39.

Respondents, and each of them, hereby except to Finding No. 15, page 13 of the Intermediate Report, upon the ground that said Finding is an inaccurate and incomplete statement of the evidence relating to the operation of the oil mill.

The following facts were established by uncontradicted evidence or stipulation by counsel for the Board:

There is no set program for the operation of the oil mill. It is operated according to the amount of cotton seed which the Company has on hand and the market conditions (tr. 2492). Occasionally, however, some of the seed in storage heats up and it is necessary to mill this "hot seed" in order to keep it from spoiling (tr. 2493). One of the main purposes of

maintaining the cattle feed yard at Corcoran is to provide an outlet for cotton seed cake, which is a by-product of the cotton seed, and sometimes, when out of feed for cattle, the mill is operated a day or so to furnish feed for them (tr. 2494).

The following operations of the oil mill was to crush seeds from cotton ginned during the 1938-1939 ginning season (Tr. pgs. 2551, 2552):

The oil mill started October 24, 1938 on the crushing of the 1938 seed and closed November 15, 1938. It reopened January 5, 1939, and closed again January 12, 1939. It reopened February 22, 1939, for the purpose of milling some hot seed, and closed again February 24, 1939 (tr. 2551-2). It reopened April 29, 1939, for the purpose of producing cotton seed cake to feed the cattle at the plant, because the Company was short of feed, and ran until May 2, 1939, when it was again closed (tr. 2551-3). The mill was also operated two days in the early part of June 1939, to provide cattle feed for the cattle at the plant (tr. 2552-3).

Respondents, and each of them, also hereby except to the omission from said finding of the following relevant evidence, the correctness of which was stipulated to by counsel for the Board:

The following operations of the oil mill were to crush seeds from cotton ginned during the 1937-1938 season. (Tr. p. 2551).

The mill started operating on September 20, 1937 and closed March 7, 1938. It reopened May 3, 1938 and closed May 17, 1938. It reopened

again July 1, 1938 and closed September 27, 1938 (Tr. p. 2550, p. 2551), at which time the crushing of the seed derived from the 1937-1938 ginning season was completed.

Respondents, and each of them, specify all of the foregoing omission as Exception No. 39.

Exception No. 40.

Respondents, and each of them, hereby except to the omission from said Intermediate Report of Findings based upon the following relevant and material facts, the correctness of which was established by uncontradicted evidence, or stipulated by counsel for the Board:

The total amount of seeds crushed in the oil mill at Corcoran from the 1937-1938 ginning season was 23,716 tons (Tr. p. 2544).

The total amount of seeds crushed in the oil mill at Corcoran from the 1938-1939 ginning season was 23,716 tons (Tr. p. 2544).

In order to obtain cotton planting seed, it is the practice of the Company to plant a special seed on a certain acreage each year, and the seed derived from the cotton grown on this particular acreage is then sacked and stored separately from the regular seed which goes to the mill for crushing, and the planting seed so set aside is used for the planting of the cotton crop during the following season (tr. 2554-5). In 1937, the Company set aside a total of 1537 tons of seed to be used for 1938 planting. However, due to the reduction in cotton acreage caused

by floods and the Government crop control program, a total of only 1007 tons of planting seed was laid aside in 1938 for 1939 planting. On November 17, 1938, 879.4 tons of this planting seed had been sacked, hauled, and stored (tr. 2553). In addition there were on hand about fifty or sixty tons which had already been sacked, but had not been weighed or stored (tr. 2556).

On November 17, 1938, the picking of cotton set aside for planting seed was completed (Tr. p. 2555), and on that date practically all of the planting seed which was laid aside for the next season had been sacked and hauled (Tr. p. 2633).

Respondents, and each of them, hereby specify the foregoing omission as Exception No. 40.

Exception No. 41.

Respondents, and each of them, hereby except to Finding No. 17, page 14 of the Intermediate Report, on the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter specified.

The evidence showed that the peak of employment each year is between October 15, and November 15, and that the peak of employment in the 1937-1938 season was at some time during the week ending October 28, 1937, at which time 189 employees, exclusive of office help, were on the payroll. The evidence showed that at some time during the week ending November 18, 1937, there were 183 employees, exclusive of office help, on the payroll, but, contrary to the statement in said Finding, the peak of em-

ployment did not occur on November 18, 1937, or at any time during the week ending on that date (Tr. p. 2542, p. 2543). The evidence also showed that the peak of employment in the 1938-1939 season was at some time during the week ending October 27, 1938, at which time 86 employees, exclusive of office help, were on the payroll. The evidence also showed that at some time during the week ending November 17, 1938, there were 84 employees, exclusive of office help, on the payroll, but, contrary to the statement in said Finding, the peak of employment did not occur on November 17, 1938, or during the week ending on that date (Tr. pgs. 2542, 2543).

Respondents, and each of them, hereby specify the foregoing as Exception No. 41.

Exception No. 42.

Respondents, and each of them, hereby except to Finding No. 18, page 14 of the Intermediate Report, on the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter mentioned.

There was no evidence introduced to support the statement in said Finding that the employees, or any of them, were "regular" employees or that they, or any of them, "were still regarded as Boswell employees" after being laid off, and there was no evidence that "when an operation was about to start up, the men usually employed on the job involved were informed by various methods, including personal calls by Gordon Hammond or his messengers and told to report." On the contrary, the evidence

showed that in most cases the men kept in touch with Gordon Hammond and applied to him for work, but if there was no work available at the time such application was made, then he sometimes informed them when he anticipated work would be available and, as a matter of accommodation to the applicant, would agree to thereafter notify them when work was available.

In illustration of the above, the following are some of the instances shown by the record where the complaining witnesses applied to Gordon Hammond for reemployment after a lay off:

H. N. Wingo testified that he applied to Gordon Hammond for work in the gin in October 1938 (Tr. p. 1016).

L. E. Ely testified that he applied to Gordon Hammond when he was reemployed in October, 1938 (Tr. p. 1249).

W. R. Johnston testified that he applied to Gordon Hammond for work October 10, 1938 (Tr. p. 240).

O. L. Farr testified that he saw Gordon Hammond about reemployment in the fall of 1937 (Tr. p. 313).

George J. Andrade testified that upon at least two occasions he applied for work after a previous lay off (Tr. pp. 1121 and 1124).

The evidence further showed that it was not the custom or practice to hold positions open for former employees who had previously been laid off for lack of work, but, on the contrary, the applicant who qualified to perform the work when work was avail-

able was employed at the time of making application. There were a few instances, however, when Gordon Hammond got in touch with former employees, either personally or through messenger, and offered work to them.

The evidence also showed that when employees were laid off because of the lack of further work it was the custom and practice for the employees so laid off to seek and, if possible, obtain other employment, and there was no understanding or agreement of any sort that any employee so laid off should remain unemployed and wait until the company later had employment available for him. Neither was there any understanding or agreement of any kind that after an employee was so laid off that the company should have first, or any, call on his future services. It is clear from the evidence that whenever an employee was laid off his employment absolutely terminated, and there was no obligation, either on the part of the company to later re-employ him, or on the part of such former employee to subsequently accept employment by the company.

The above is illustrated by the following which are a few examples from the record:

James W. Gilmore left his employment with the Boswell Company in July of 1930 and didn't return until September, 1931. During that time he worked for other employers, including work at San Jose in a cold storage plant, work in fish canneries in Monterey and work upon the highway, (Tr. p. 1255, 1274).

R. K. Martin testified that he quit working for the Boswell Company on April 1, 1931, at which time he went back to Georgia and he did not return to work for the company until August 4, 1934 (Tr. p. 516). In September, 1937, Martin quit working for the Boswell Company and went to work for another employer. He didn't return to work at the Boswell plant until March, 1938 (Tr. p. 520, p. 546, p. 579). After the mill closed down in the summer and Martin was laid off he asked Gordon Hammond to notify him when the superintendent of the oil mill with another firm in Kingsbury wanted him to work (Tr. pgs. 549, 549, corrected by stipulation dated July 6, 1939).

L. A. Spear in the spring of 1933 was laid off and he didn't return to work for the Boswell plant for eighteen months (Tr. p. 854).

Steve J. Griffin ceased work for the Boswell Company in May, 1936, at which time he bought a hay baler and didn't return to the employ of the company for three seasons (Tr. p. 1287).

Boyd Ely quit working for the Boswell Company in the latter part of May, 1937, and took a job in the grain harvest for 60 or 70 days, after which he applied to Gordon Hammond for work again and was put to work in September, 1937 (Tr. pgs. 1156, 1157, 1174 and 1175). He testified that he left the employ of the company in May, 1938, that he worked in the harvest that year and that he returned about July, 1938 (Tr. pgs. 1174, 1158).

H. N. Wingo was laid off in April, 1938, after which he secured a job with Tulare Land Company and worked for that company from April until June 9, 1938 (Tr. pgs. 993, 994).

Farr quit working for the company in July, 1937, and went to work for the San Joaquin Cotton Company in Bakersfield where he worked four months. He returned and again secured work at the Boswell Company on November 15, 1937 (Tr. p. 262).

All of the above are examples of men complaining in this case and illustrate the fact that Boswell Company employees did not consider themselves and were not considered by the company as employees when they were not performing work for the company.

The seasonal nature of the business of the Boswell Company and the great fluctuation in employment demonstrates the fact that the above mentioned portions of said Finding are without support. The decrease from a peak employment of 189 in the 1937-1938 season to a peak employment of 86 in the 1938-1939 season made it impossible for the Boswell Company to re-employ all former employees during the 1938-1939 season.

The following portion of said Finding, to-wit:

“In any event there is no evidence that any of the seasonal lay-offs were regarded as terminations of employment”

is unsupported by and contrary to the evidence, as above pointed out.

Respondents, and each of them, hereby specify the foregoing as Exception No. 42.

Exception No. 43.

Respondents, and each of them, hereby except to Finding No. 19, page 14 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter mentioned.

The statement in said Finding that Gilmore was laid off "on or about March 30, 1938" is contrary to the evidence. The evidence shows he was in fact laid off on March 19, 1938. (Tr. p. 1267).

Respondents, and each of them, hereby specify the foregoing as Exception No. 43.

Exception No. 44.

Respondents, and each of them, hereby except to Finding No. 20, pages 14 and 15 of the Intermediate Report, upon the ground that it is contrary to and unsupported by the evidence and incomplete in the respects hereinafter mentioned.

The portion of said Finding referring to Prior as "secretary-treasurer of the California State Council of Edible Oil Workers, affiliated with the A. F. of L." is contrary to the evidence. The Finding relates to occurrences on March 15, 1938. The evidence shows that the California State Council of Edible Oil Workers was not organized until July 1, 1938, and that Prior did not become secretary of said organization until July 1, 1938 (Tr. p. 391). Furthermore, the evidence shows that the California State Council of Edible Oil Workers does not and never

did hold a charter from the A. F. of L. and is not in any way affiliated therewith but operates merely under the authority of several affiliated local unions, for each of which Prior acts as business representative (Tr. pgs. 392 to 394).

The evidence also shows that Prior met O. L. Farr at the instigation of Farr's brother, who was president of one of Prior's local unions in Bakersfield (Tr. pgs. 396, 397, 336).

The following portion of said Finding, to-wit:

"O. L. Farr * * * told E. F. Prior * * * that in his opinion the employees of the Boswell Company were interested in organizing a union. Farr gave the names of the officials of the respondent to Prior."

is based solely upon hearsay and incompetent testimony which was erroneously admitted over the objection of respondents. Respondents duly interposed an objection to the question calling for said testimony, upon the ground that it was hearsay and not binding upon any of the respondents. The Trial Examiner erroneously overruled respondents' objection and respondents excepted thereto. (Tr. p. 70, l. 20 to p. 71, l. 4; p. 71, l. 17 to l. 19). Furthermore, the evidence shows that O. L. Farr denied that Prior and he discussed the organization of a union at the Boswell plant during the conversation referred to in said Finding (Tr. p. 336).

Respondents, and each of them, hereby specify the foregoing as Exception No. 44.

Exception No. 45.

Respondents, and each of them, hereby except to the following portion of Finding No. 21, page 15 of the Intermediate Report, to-wit:

“About a week or two following Prior’s visit to the plant, the oil mill of respondent ceased operations”

on the ground that said portion of said Finding is contrary to and not supported by the evidence. Prior testified that about a week or two after his visit he was informed that the oil mill had ceased operations (Tr. p. 72), but the uncontradicted evidence and stipulation by counsel for the Board shows that the oil mill of respondent, Boswell Company, closed on March 7, 1938, which was before Prior’s alleged visit, and that it was reopened on May 3, 1938. (Tr. pgs. 2550, 2551).

Respondents, and each of them, hereby specify the foregoing as Exception No. 45.

Exception No. 46.

Respondents, and each of them, hereby except to Finding No. 22, pages 15 and 16 of the Intermediate Report, upon the ground that certain portions thereof, which are hereinafter designated, are contrary to and unsupported by the evidence and are based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents, and upon the ground that the Finding incorrectly states the testimony.

The portion of said Finding referring to the list of 30 names as employees “who were interested in

union affairs" is contrary to and unsupported by the evidence. There was no evidence that any of the persons named on the list referred to were interested in organizing a union at the Boswell plant, or in union affairs. The evidence shows that Farr was the only person in Corcoran with whom Prior had talked before that time (Tr. p. 404). Farr testified that the list was prepared by Gilmore and was given by Gilmore to Farr and that Farr gave the list to Prior at Gilmore's request (Tr. pgs. 333, 299, 300). The evidence shows that the list merely contained names of persons whom Prior and possibly Gilmore thought and hoped would be interested in a union.

The portions of said Finding relating to conversations were based solely upon hearsay and incompetent testimony which was erroneously introduced over the objection of respondents. No evidence was introduced showing or tending to show that respondents, or any of them, conferred any authority upon any of the persons mentioned in said Finding to speak or act on behalf of any of the respondents or that any of such persons had any authority. Respondents duly interposed objections to the questions calling for each of said alleged conversations, and the Trial Examiner erroneously overruled each of said objections to each of which respondents duly excepted (Tr. p. 70, l. 20, p. 71, l. 4, p. 71, l. 17 to l. 19, p. 76, l. 6 to l. 18).

The portion of said Finding wherein it is stated that the meeting referred to "was attended by Farr and other interested employees, as well as Frank Gonders, Jack Owens and Clyde Sitton" is contrary

to and unsupported by the evidence. Prior testified that approximately six or eight men attended this meeting, but the only ones he could recall were Frank Gonders, Bill Robinson, Clyde Sitton, Jack Owens, a man by the name of Weatherby and one by the name of Gilmore (Tr. pgs. 74 and 75). The evidence and records show that neither Weatherby nor Gilmore was an employee of the Boswell Company at that time (Tr. pgs. 74, 75). Contrary to the express statement in said Finding, Farr testified that he was working and did not attend this meeting on July 13 and that he heard about the meeting from some of the employees who were going (Tr. p. 333).

The statement in said Finding referring to Clyde Sitton as follows:

“Clyde Sitton, a nephew of Gordon L. Hammond, plant manager of respondent”

is misleading and is irrelevant to any of the issues in this case. No evidence was introduced showing any authority in Clyde Sitton to act or speak for or on behalf of any of the respondents. The above statement is misleading for the reason that it does not appear whether the words “plant manager of respondent” refers to Clyde Sitton or to Gordon Hammond. The evidence is uncontradicted that Gordon Hammond was the plant superintendent and that Clyde Sitton had no such position with the Boswell Company.

There is absolutely no evidence in the record to support the statement in said Finding that Gonders “is an old and faithful employee of respondent”.

Prior's testimony regarding his conversation with Gonders at the meeting of July 13, which was erroneously introduced over the objection of respondents, is incorrectly stated in said Finding. Prior testified that Gonders stated at said time that

"the employees of the Boswell Company were one happy family, that they were very well satisfied with 35 and 50 cents per hour and that they really wanted no organization in the plant" (Tr. p. 75).

The following statement in said Finding, to-wit:

"Those six or eight who were interested in the organization signed membership cards at that meeting"

is contrary to and unsupported by the evidence. The evidence shows that, with the exception of Gilmore, none of the men who attended the meeting of July 13 showed any interest in Prior's organization, and, on the contrary, were not interested therein. The evidence also shows without contradiction that none of the men present at said meeting signed membership cards at that meeting and that the only man present at the meeting who subsequently joined the union was Gilmore, and no applications for membership in the union were signed or taken from anyone prior to September 2, 1938, as shown by Prior's testimony (Tr. pgs. 81, 409 and 410).

The portion of said Finding wherein it is stated that Gilmore told Prior

"he had not been recalled to his job in the oil

mill when said mill started operations on July 1, 1938, because of his union activities”

is based entirely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and the said portion of said Finding incorrectly states the testimony of Prior, which was erroneously introduced. The only testimony relating to this meeting was the testimony of Prior as follows:

“He told me he had not been re-employed when the plant had started up on July 1st and that Mr. Hammond had been very indefinite as to any future employment with the J. G. Boswell Company” (Tr. p. 78).

The portion of said Finding wherein it is stated that Gilmore advised Prior of some of the anti-union activities of Gordon Hammond, including a conversation therein referred to which Gilmore claimed to have had with Hammond, is unsupported by any evidence. Although Gilmore testified to an alleged conversation with Gordon Hammond about June 1, 1938, the evidence does not show that these alleged matters were ever communicated by Gilmore to Prior.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 46.

Exception No. 47.

Respondents, and each of them, hereby except to Finding No. 23, page 16 of the Intermediate Report, upon the ground that certain portions hereinafter

designated do not fully or accurately state the evidence upon the matters therein mentioned.

E. F. Prior testified that on July 17, 1938, he filed a charge with the regional office of the Board at Los Angeles, charging, under oath, that the Boswell Company was guilty of unfair labor practices in that it had violated Section 8 (1) of the act. He testified that the filing of this charge was the next step in his organizational activities (Tr. p. 79, p. 410), and that the filing of such charge was his only organizational activity between July 13, 1938, and September 2, 1938, aside from an exchange of correspondence with Gilmore and Farr (Tr. p. 409, p. 410). He further testified that the only person with whom he had talked in Corcoran prior to the meeting of July 13 was Farr (Tr. p. 404) and that at the time of the filing of the charge above mentioned he had talked only with Farr, Gonders, Owens, Sitton, Wetherby and Gilmore (Tr. p. 404). He had not even discussed the alleged unfair labor practices with the management of the Boswell Company, and the evidence shows no investigation on his part before he filed this sworn charge. Since Prior testified that Gonders, Owens and Sitton showed no interest in his organizing project and since Wetherby was not a Boswell employee, this sworn charge was apparently based solely upon Prior's conversation with Gilmore who at that time was not an employee of the company.

The above charge was never served upon any of the respondents and during the hearing demand was

made on behalf of the respondents for the production of a copy of that charge for the purpose of testing the credibility of Prior and comparing the charges sworn to in the previous charge with the later ones which Prior signed, upon which the complaint and amended complaint were issued (Tr. pp. 400 to 403). The record discloses that before this request had even been completely stated the Trial Examiner called counsel to the bench for a consultation (Tr. p. 400). At that time, off the record, the Trial Examiner stated in substance to counsel that he didn't think the witness should be questioned about the former charge. When the proceedings resumed the request was completed upon the record for the production of the former charge, and the Trial Examiner erroneously sustained an objection to the demand and refused to direct the witness to produce a copy of the charge which was in his file, to which rulings respondents, and each of them, duly excepted and do hereby except.

Prior further testified that although Corcoran is located in the Twentieth Region he filed the above mentioned charge in the Twenty-first Region at Los Angeles, with the consent of the Regional Director, because Prior's office was located in Wilmington and it would be more convenient for him to have the matter handled by the Los Angeles office. He stated that he was later informed by the Regional Director of the Twenty-first Region that the charge must be filed in the Twentieth Region. As a result, Prior withdrew the charge and re-filed the same charge

the next day in the Twentieth Region at San Francisco (Tr. pgs. 484, 485).

As stated in the above mentioned Finding, Prior testified that at the meeting of September 2, 1938, with Louis T. Robinson, Gordon Hammond and William W. Boswell, he informed them that "the Union" had filed said charge with the Board (Tr. p. 83). This is shown by the uncontradicted evidence to be a misstatement of the fact by Prior since the Union had not been organized either at the time the charge was filed or at the time of said meeting and, in fact, was not organized until some time in October or November, 1938. (Tr. pp. 93-98)

Respondents, and each of them, hereby specify the foregoing as Exception No. 47.

Exception No. 48.

Respondents, and each of them, hereby except to Finding No. 24, pages 16 and 17 of the Intermediate Report, upon the ground that certain portions thereof, which are hereinafter designated, are contrary to and unsupported by the evidence and do not fully or accurately state the evidence on the matters therein mentioned.

The portion of said Finding wherein it is stated that Robinson said "that because of the floods and cost control they would not have a run of more than 10,000 bales * * *" is contrary to the evidence. Robinson's testimony in this regard was "that on account of the flood and the government crop control program we knew we wouldn't have over the 10,000 bale run * * *" (Tr. p. 2400).

The following portion of said Finding, to-wit:

“From Robinson’s own statement he brought Gilmore’s name into the conversation * * *”

is contrary to the evidence in this regard. Robinson’s testimony shows that the name of Gilmore came up during the conversation, but he did not recall who brought it up (Tr. p. 2400, 2401). Prior’s testimony in this regard, however, was that when Robinson referred to the organization of the key men rather than the radical casual workers, etc., Prior asked Robinson if he was referring to Gilmore and Robinson stated that he was (Tr. p. 84). Consequently, the above portion of said Finding is directly contrary to the testimony.

The following portion of said Finding, to-wit:

“Prior, at the request of the regional office at San Francisco withdrew the 8 (1) charge”

is an incorrect and incomplete statement of the evidence. Prior’s testimony in this regard was that the charge was withdrawn because “It appeared, or we felt that the alleged violation was no longer being practiced and that it was no longer necessary to go ahead and press the charge” (Tr. p. 427). At that time Prior was asked to state, in his own words, what the alleged violation was, and the Trial Examiner erroneously sustained an objection to the question to which ruling respondents duly excepted and do hereby except (Tr. p. 428). In addition to the foregoing reason for withdrawal of the charge, Prior testified that the director of the Twentieth Region

sent Mr. Larson, one of the Board's investigators, to Corcoran for the purpose of investigating the charge; that Larson had lunch with Prior and Farr, that Prior outlined to Larson the reports from Gilmore and conversations with Farr, and that Larson, after completing his investigation on August 31, 1938, advised Prior that he felt there was not sufficient evidence, or it was impossible to secure sufficient evidence, to warrant the issuance of a complaint and he requested Prior to withdraw the charge if nothing further happened within a couple of weeks. Prior testified that the charge was withdrawn shortly after the four men, Andrade, Martin, Farr and Boyd Ely, had been placed back on the job (Tr. p. 428). The date of this event had been fixed by Prior's testimony as being just after his conference with Gordon Hammond on October 8, 1938, at which conference the employment of said men was discussed (Tr. p. 86 and 87). Prior later testified that the date on which the charge was withdrawn could have been as much as two weeks before October 8, or as much as two weeks following that time (Tr. p. 483).

Prior did not at any time deny that Robinson stated during the meeting therein referred to that "the company had no objection to any of its men joining any union that they saw fit * * *". Prior in fact admitted that he had been told by the management of the Boswell Company before November 18, 1938, that it was no concern of the company whether its men joined or didn't join a union (Tr. p. 428).

Respondents hereby except to the following portion of said Finding, to-wit:

“In view of Robinson’s own admission and the undersigned’s observation of both respondent and Prior, the undersigned believes that Prior’s version of the conversation is correct”

upon the ground that said conclusion is wholly unwarranted by the testimony of said parties at the hearing and as shown in the record.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 48.

Exception No. 49.

Respondents, and each of them, hereby except to Finding No. 25, page 17 of the Intermediate Report, on the ground that certain portions of said Finding are not supported by and are contrary to the evidence and do not accurately or fully state the evidence in the respects hereinafter specified.

Prior’s testimony with regard to the matters mentioned in said Finding was that on October 8, 1938, he told Gordon Hammond that he had been informed that Andrade, Martin, Boyd Ely and Farr had been laid off and the oil mill shut down, and these men had the understanding that they would not be re-employed because of their union activities. Prior explained to Gordon Hammond that there might be some misunderstanding and that there were no doubt rumors floating around on both sides. He testified that he then mentioned to Gordon Hammond some of the other cases in which he, Prior, had had to go

before the Labor Relations Board and told him he would like to clear up any misunderstandings. He testified that they discussed these four men and four other men who had previously been laid off and had not been re-employed. Gordon Hammond stated the reason the other four men had not been re-employed was that there was no part of the plant operating in which they had ever worked before or in which they had experience, but had Martin, Ely, Farr and Andrade applied for employment they would have placed them back on (Tr. p. 86, 87). The statement of this conversation as contained in the Intermediate Report is not only ambiguous but does not conform to the testimony.

The following portion of said Finding, to-wit:

“Prior left, picked up Martin and drove to the home of Andrade, while there, a brother of Hammond drove up and notified Andrade to report to work that afternoon”

does not correctly set forth the testimony. Prior's testimony in this regard was that while he was at Andrade's house a gentleman identified by Andrade and Farr as a brother of Gordon Hammond came up (Tr. p. 89). No evidence in the record shows that Gordon Hammond had a brother. The evidence further shows that Farr went to Oklahoma on or about September 26, 1938 and did not return to Corcoran until October 15 (Tr. p. 328).

The following portion of said Finding, to-wit:

“On October 11, Prior received notice from Martin that he, Martin, had been recalled to work”

is a mis-statement of and contrary to the evidence. Prior's testimony in this regard was that he received a “letter dated on or about October 11 from R. K. Martin stating that he had returned to work that day, or the day previous”. (Tr. p. 89). There was no evidence that respondent Boswell Company recalled Martin to work.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 49.

Exception No. 50.

Respondents, and each of them, hereby except to Finding No. 26, pages 17 and 18 of the Intermediate Report, on the ground that a portion of said Finding, as hereinafter specified is not supported by and is contrary to the evidence, and that said Finding does not completely set forth the testimony relating to the matter therein mentioned.

The portion of said Finding wherein it is stated that Gordon Hammond said the men in question “would be recalled to work” is contrary to the evidence. Prior testified that Gordon Hammond's statement in this regard was that had these men applied for employment they would have placed them back to work to which statement Prior replied that he would be very glad to explain to the men that if they applied to him they would be put back to work. (Tr.

p. 88, 89). Gordon Hammond's testimony in this regard was that he told Prior that they didn't have work yet to employ all these men but he was giving them work just as fast as they had work for them to do (Tr. p. 2558).

In addition to the above testimony, Gordon Hammond also testified that Martin, Farr, Andrade and Boyd Ely were mentioned in the conversation and he told Prior that Martin was in to see him just a few days before and Martin told him that he, Martin, had a job at the Kingsburg Oil Mill and they were going to call Gordon Hammond about it. He said that he told Prior that Boyd Ely hadn't worked in the gins at any time and that the mill wasn't running and that as soon as they had work for Ely they would pick him up. Hammond said that he told Prior that Andrade had worked at the gin and mill both, and as soon as they had work he would pick him up; that Farr had gone to Oklahoma and hadn't come back (Tr. p. 2558, 2559).

Martin's job in the Kingsburg Oil Mill was confirmed by his own testimony when he stated that he had asked Gordon Hammond to notify him when the superintendent of that mill called (Tr. p. 548, 549). Also Farr testified that he was in Oklahoma at the time of the above conversation (Tr. p. 328).

Respondents, and each of them, hereby specify the foregoing as Exception No. 50.

Exception No. 51.

Respondents, and each of them, hereby except to Finding No. 27, page 18 of the Intermediate Report,

upon the ground that said Finding does not completely set forth the evidence concerning the matter therein mentioned.

Prior testified that the only persons he could recall as being present at the meeting therein mentioned were Martin, Farr, Andrade and Spear (Tr. p. 91).

The evidence shows that up to this date Prior and his co-workers had succeeded in interesting only four or five employees of the J. G. Boswell Company in his union to the extent of signing applications for membership therein.

Respondents, and each of them, hereby specify the foregoing as Exception No. 51.

Exception No. 52.

Respondents, and each of them, hereby except to Finding No. 28, page 18 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence in the respects hereinafter mentioned. The evidence shows that application for the charter was made by Prior personally by sending a letter to Edward Vanderleur, representative of the American Federation of Labor, setting forth the names of the employees of the Boswell Company to be named on the charter. The charter when received by Prior from Vanderleur was dated October 26, 1938, (Tr. p. 96, 98). The evidence clearly shows that the parties named in said Finding did not sign the, or any, application for a charter, that the application was made by Prior personally and the date of such application was before October 26, 1938, as the application was forwarded by mail.

Respondents, and each of them, hereby specify the foregoing as Exception No. 52.

Exception No. 53.

Respondents, and each of them, hereby except to Finding No. 29, page 18 of the Intermediate Report, upon the ground that said Finding is an incomplete statement of the evidence relating to the matters therein mentioned.

Prior testified that the only persons who were present at the meeting of November 5, 1938, whose names he could recall, were Martin, Andrade, Spear, Farr and C. E. Powell (Tr. p. 94). Prior testified to the names of the officers elected as president, vice-president and secretary-treasurer, but he also testified that he couldn't remember the names of the other officers and those who were chosen on the Board of Trustees. (Tr. p. 116).

Respondents, and each of them, hereby specify the foregoing as Exception No. 53.

Exception No. 54.

Respondents, and each of them, hereby except to all portions of all of the Findings in said Intermediate Report relating to conversations alleged to have occurred between the complaining union employees, or any of them, and any or all of the following named persons: Tom Hammond, Joe Hammond, Julius Hammond, Bill Robinson, Kelly Hammond, Yankee Roberson, Rube Lloyd, Clyde Sitton, Oscar Busby and Bill Nichols, upon the ground that all of the above entioned portions of the Findings are based

entirely upon hearsay and incompetent testimony, all of which was erroneously introduced over the objection of respondents, and upon the ground that there was no evidence showing or tending to show any authority was conferred by respondents, or any of them, upon any of said persons to speak or act for or on behalf of any of the respondents or that any of said persons had any such authority, and upon the ground that said portions of all of the Findings are unsupported by any competent and credible evidence. Respondents, and each of them, duly objected, upon the foregoing grounds, to the introduction of testimony regarding all such alleged conversations hereinabove referred to, and the Trial Examiner erroneously overruled all of said objections. Respondents duly excepted thereto and do hereby except to each and all of said rulings.

The evidence clearly shows without contradiction that Louis Robinson was general manager for San Joaquin Valley of the Boswell Company (Tr. p. 2115, p. 2394); that Gordon Hammond was the plant superintendent of the Corcoran plant (Tr. p. 2395); that the authority of Gordon Hammond and Louis Robinson was limited by the head office but that they were the only persons in Corcoran who were authorized to speak for the Boswell Company concerning its business, or to bind the company. (Tr. p. 2395). Gordon Hammond was in charge of the manufacturing end of the plant and Louis Robinson was in charge of securing raw materials, financing and collections (Tr. p. 2396). The evidence is

clear that there was no one at the Corcoran plant, other than Louis Robinson and Gordon Hammond, who had any authority from the Boswell Company to employ or discharge any employees (Tr. pgs. 2165, 2396 to 2398) or to speak or act for the company on any employment matters, (Tr. pp. 2456-2458). No one at the plant carried the title of foreman and Louis Robinson testified that he would describe Gordon Hammond as the foreman. However, there are employees who direct the manner in which work on particular jobs should be done (Tr. pgs. 2159, 2160). None of these employees who direct certain jobs keep the time for other men on the same or any job. Gordon Hammond keeps time for all of the men (Tr. p. 2751, p. 2752). There was no evidence that any of the men above mentioned, or any employees, other than Gordon Hammond or Louis Robinson possessed any authority to speak for the company on any question of its labor policy, or upon any other policy.

The following is an example of the evidence in the record:

The undisputed evidence shows, for example, that Rube Lloyd is an expert carpenter and construction man (Tr. p. 2160), that he does not have men under him at the plant (Tr. p. 2748), that when he does a job outside the plant he takes the men designated by Gordon Hammond to do the job, that Gordon Hammond usually goes with him to lay out the work, that Lloyd directs the work and Lloyd and the other men

do the work. (Tr. p. 2749). He has no authority to employ or discharge employees. O. W. Busby is the most experienced man in the machine shop (Tr. p. 2162); he has no authority to hire or discharge employees (Tr. p. 2164); he does not keep time for any men working with him (Tr. p. 2752). The only evidence regarding Sitton was that he was a nephew of Gordon Hammond and had worked for the company for about two and one-half years (Tr. p. 2709). He did not have authority to hire or fire employees (Tr. p. 2164).

The absence of any authority to hire or fire or speak for or bind the company applies to each of the other men named (Tr. pgs. 2752, 2164, 2394 to 2398, 2159 to 2160).

The fact that the employees themselves recognized this limitation of authority is shown by the following testimony:

Martin testified that on November 18, 1938, after the trouble which occurred at the plant between the union and non-union men on that day they went into the office of Gordon Hammond who was in Los Angeles at that time. Among those present in the office were Rube Lloyd, Bill Nichols and Bill Robinson (Tr. p. 535). In spite of the presence of those persons in the office he testified as follows: "We just waited there for a long time, never did nobody with authority show up, and finally Mr. Robinson put his head out of the door and told us to go back

to work, he would be around to straighten it out" (Tr. pgs. 536, 537, corrected pages 607, 608). Martin further testified that on the same day, after they left Gordon Hammond's office and went back to work, that he had a conversation with Bill Robinson during which Martin stated, "If Mr. Hammond and Mr. Louis Robinson comes down here and says 'Go home' all right, but until they do we won't" (Tr. p. 540). He explained that he was referring to Gordon Hammond and Louis Robinson (Tr. p. 562). According to Martin, Tom Hammond was among those present at the gins at that time (Tr. pgs. 537 to 539).

Spear testified that on November 18, 1938, after they went back to the gins there was some difficulty about getting the non-union men to work with the union men (Tr. p. 879). He stated that Kelly Hammond (Tr. p. 872), Bill Robinson (Tr. p. 874), Joe Hammond (Tr. p. 883) and many others were around the gins, but he testified as follows: "as well as I can recall, I sat down on the stairs, in fact, I was stalling for time. I was waiting for somebody to come around." (Tr. p. 884). He testified that he was waiting for Louis Robinson (Tr. p. 982).

The only other testimony relating to the duties of the above mentioned men was the testimony of some of the complaining union men that they had from time to time been directed in the manner of doing their work by certain men above mentioned. Con-

sequently, there is no evidence to support any Finding that the respondents, or any of them, were bound by any acts or statements by the persons hereinabove mentioned and the evidence shows the contrary to be true.

Respondents, and each of them, hereby specify the foregoing as Exception No. 54.

Exception No. 55.

Respondents, and each of them, hereby except to Findings Nos. 30, 31, 32, 33, 34 and 35, and each of them, upon the grounds that, in the respects hereinafter mentioned, said Findings are not supported by any substantial, competent or credible evidence and are contrary to the evidence, that they are based largely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and upon the ground that they incorrectly portray the testimony and are misleading.

The evidence shows that James W. Gilmore was first employed by the Boswell Company in 1928 (Tr. p. 1255, p. 1269). Immediately prior to his employment he had been doing practically nothing and was working on a truck at Indio, California, (Tr. p. 1271). The last time he had worked in cotton mills before that was in 1921 or 1922 at Brawley, California (Tr. p. 1270). After his employment by the Boswell Company he did odd jobs and worked off and on with intermittent lay-offs until July, 1930, (Tr. pgs. 1272, 1273).

Some time after July 4, 1930, he left the employment of the Boswell Company because there

was nothing to do and he worked at various jobs around San Jose and Monterey. At one time during his testimony he stated that he went to Salinas during that time and worked in the fruit and vegetables, (Tr. p. 1273). Later he denied that he went to Salinas or worked in the fruit and vegetables (Tr. p. 1274). He then stated that during the time mentioned he worked at San Jose in cold storage and at Monterey in fruit canneries and that he also worked on the highway (Tr. p. 1274). He later stated that during that same time he worked in San Jose and also in the fish cannery at Monterey (Tr. p. 1277). At any rate he didn't return to work for the Boswell Company until September, 1931, (Tr. p. 1274).

He first testified that when he went back to work in 1931 he worked in the lint room until 1936 (Tr. p. 1256). Later he testified that when he returned to work in 1931 he helped put up the oil mill which had burned down (Tr. pgs. 1274, 1275), and later that he worked at odd jobs such as grinding barley (Tr. p. 1275). He stated that since 1936 he worked in the seed house but when the mill was not running he would cut weeds, do painting and odd jobs (Tr. p. 1257).

He first testified that he worked practically all of the time from 1931 (Tr. p. 1255, 1275). He later admitted on cross examination that in that period during the depression he was laid off and that even Gordon Hammond, the plant manager, went out and ran a ranch (Tr. p. 1275). Also he admitted

that he was laid off a few weeks in 1937, during which time he took a trip to Oregon (Tr. p. 1277), and that he was laid off about three weeks in 1936 (Tr. p. 1276).

As heretofore stated, the oil mill closed March 7, 1938. Gilmore was laid off March 19, 1938. He was re-employed on May 2, 1938 and laid off again on May 17, 1938, when the mill closed (Tr. p. 2626) (Board's Exhibit No. 3).

The evidence, and particularly the employment record of Gilmore, shows conclusively that although he worked for the Respondent Boswell Company off and on over a considerable period of time, he was not what would be termed a regular employee, but, on the contrary, worked almost entirely in the performance of seasonal work in connection with the normal seasonal operations of said respondent.

The portion of Finding No. 30 wherein it is stated that Gilmore "was recalled to work by respondent on the 2nd of May" is a misstatement of the evidence. There is no evidence in the record to support any finding that the company recalled Gilmore to work at that time, or at any time. The evidence merely showed that he was again employed.

The undisputed evidence shows and Gilmore himself admitted that after his layoff on May 17, 1938, he never applied for work from the Company again (Tr. pp. 1280 to 1282 and 2636).

Gilmore's testimony throughout was contradictory and unreliable and is entitled to little or no weight, especially is this the case insofar as his

testimony relating to union activities is concerned. In this regard Gilmore testified that the first thing he started to do was to try to organize a union. He said he could not place the date or the month but that he started some time in the spring of 1938. (Tr. p. 1258). In answer to the following question by counsel for the Board, "that was before you were laid off?", he answered "Yes" (Tr. p. 1258). Later he testified that he started talking about the union in January (Tr. p. 1259). He said that he talked with a majority of the boys about the union when he was working there, that after he was laid off he was down to the plant sometimes two or three times a week all through the summer and even after the union was started he kept talking to the boys. He stated that he never did sign any of them up but that he asked them to come to meetings (Tr. pgs. 1258 to 1260). He testified that he joined the union but that he couldn't remember the date, except that it was some time in the summer of 1938 (Tr. p. 1268).

The record shows that in spite of this alleged activity and his invitations to others to come to the meetings and the fact that he also joined the union and purported to be one of the early union organizers at the Boswell plant, he was not mentioned by any of the witnesses as having been present at any of the meetings. The evidence shows that he did not apply as a charter member of the union and did not sign anyone up in the union.

Gordon Hammond testified that several days be-

fore the mill closed in May, at which time Gilmore was working at the mill, he had a conversation with Gilmore, at which time Gilmore said that the dust was about to get the best of him and he didn't think he would work any more after the mill closed down at that time which would be in just a few days (Tr. pgs. 2627 to 2629). This conversation was denied by Gilmore (Tr. p. 1279). Gordon Hammon testified that he also had a conversation with Gilmore on May 17, 1938, the date that the mill closed, at which time Gilmore asked him if he could get his check that day and stated that he, Gilmore, was fixing to go to Oregon and that he had a job up there for \$6.00 a day. (Tr. p. 2626).

Gilmore denied the above conversation and denied that he had a job in Oregon but significantly admitted that he went to Oregon to visit his brother in 1938 (Tr. pgs. 1277, 1278).

Gordon Hammond testified that about the middle of June, 1938, Gilmore came to the office and asked if he could borrow a trailer to move to Tulare. Gordon Hammond said he would loan a trailer to him and did so (Tr. pgs. 2629, 2630). Gilmore denied telling Gordon Hammond that he was moving to Tulare but he admitted that he borrowed a trailer from Gordon Hammond about July, at which time he told Gordon Hammond that he was moving his goods out of the house he was living in. He denied that he stated he was moving to Tulare (Tr. p. 1281). He also admitted that on a later occasion, after July 14, 1938, he again borrowed the same

trailer from Gordon Hammond, at which time he told Gordon Hammond he wanted to move his daughter's stuff to Tulare (Tr. p. 1282).

The evidence shows that in spite of the lack of memory of the times when various incidents occurred, even to the extent of failing to remember when he joined the union, he testified specifically to an alleged conversation with Gordon Hammond in June of 1938 and testified specifically to the place where such alleged conversation occurred.

The portion of Finding No. 30 wherein Gilmore's testimony purporting to relate Hammond's statement is set forth as follows: "I thought you knew quite a bit about threatening to start a union" is an incorrect statement of Gilmore's testimony. Gilmore testified that Gordon Hammond stated: "I thought you knew quite a bit about trying to start a union". (Tr. p. 1262). The portion of said Finding relating to said alleged conversation is also incomplete. Gilmore testified that at the conclusion of the alleged conversation he said to Hammond, "I am not sneaking around". "I will sign you up with the union if you want to come in," after which Gordon Hammond laughed and walked away (Tr. p. 1262). Gordon Hammond denied that any such alleged conversation ever occurred (Tr. pgs. 2624, 2625). The evidence shows, without conflict, that Gilmore was not working at the plant at the time of this alleged conversation in June, 1938. (Boards Exhibit No. 3).

The portion of said Finding No. 30, to-wit:

"From his observation of the witnesses and con-

sidering all of the testimony of Gilmore and Hammond, the undersigned believes the testimony of Gilmore”

is not justified by the manner or demeanor of the two witnesses in question at the hearing, or by the testimony of each of them as shown by the record. The record discloses that Gilmore’s testimony is replete with self-contradictions and indefinite answers, except in relation to the conversations which he claims took place.

The following portion of Finding No. 31, to wit, “on the first of July 1938, the mill reopened but Gilmore was not recalled to work” is unsupported by and contrary to the evidence. As above pointed out there is no evidence that the Company recalled Gilmore to work at any time, or that there was any promise, agreement or obligation that he would be recalled at any time.

The portion of Finding No. 31 relating to the alleged conversation between Gilmore and Julius Hammond is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and is contrary to and unsupported by the competent and credible evidence. No evidence was introduced that showed or tended to show that Julius Hammond was “oil mill foreman”, and no evidence was introduced showing or tending to show any authority conferred by any of the respondents to Julius Hammond to speak or act for or on behalf of any of the respondents or that he had any such authority. Respondents hereby re-

refer to and incorporate herein the whole of Exception No. 54 the same as if set forth herein in full. Respondents duly interposed an objection to the question calling for said alleged conversation upon the foregoing grounds and the Trial Examiner erroneously overruled said objection (Tr. p. 1265, l. 22 to p. 1266, l. 4). Respondents and each of them duly excepted to said ruling of the Trial Examiner hereinabove mentioned and do hereby except to said ruling.

Also the portion of said Finding No. 31 relating to said alleged conversation does not correctly set forth the testimony which was erroneously introduced. Gilmore did not testify that he applied to Julius Hammond for work (tr. p. 1267).

It is stated in said Finding that:

“During the first half of July after the mill had reopened Gilmore met Hammond at the plant between the main office and the scale office. Gilmore asked Hammond if his work had been satisfactory and Hammond agreed that it had been. Gilmore asked Hammond why he had not been put back to work. Hammond told Gilmore that there was no work for him to do. Gilmore asked Hammond if he was not called back to work because of the union. Hammond replied, ‘I would not exactly say that was it’, and said, ‘I have heard you were but I don’t believe everything I hear.’ ”

The foregoing portion of said Finding is ambiguous and misleading, and does not clearly or fully state

the evidence with respect to said alleged conversation. It is not shown in said statement which Hammond the alleged conversation was with. Gilmore testified this alleged conversation was with Gordon Hammond. Gilmore testified regarding the alleged conversation as follows:

“A. Yes. I asked him if my work had been satisfactory and he said it had; and I asked him why there wasn’t any work for me. And he said there wasn’t anything for me to do * * *

“And I asked him if it was because of the union and he said, ‘I wouldn’t exactly say that it is.’

“And I asked him if he thought I was in with the union. And he said, ‘I have heard you were, but I don’t believe everything I hear’” (Tr. pp. 1263 and 1264).

This conversation was categorically denied by Gordon Hammond (tr. p. 2625).

The portion of said Finding No. 31 wherein it is stated that Gilmore testified that “he had been in Coreoran at all times” is not supported by the evidence. No evidence was introduced to that effect and no evidence was introduced to show that Gilmore was available or willing to work in the oil mill at the Boswell plant at the time the mill opened on July 1, 1938.

The portion of said Finding No. 31 wherein it is stated that the “testimony of Gilmore shows that he worked for some time during the summer of 1938 on a new high school building in Coreoran” is contrary to the evidence. His testimony which was given

on June 1, 1939, was that he had been employed at the high school building "this winter" (Tr. p. 1268) and "over the period of the last six months".

The evidence shows that, as elsewhere pointed out herein, Prior concerned himself with the employment of members of his union even to the extent of engaging in a conference with Gordon Hammond on October 8, 1938, regarding the re-employment of Farr, who was in Oklahoma at the time, and Martin, who was anticipating a job with another firm. The evidence fails to show that any mention of Gilmore's employment was made by Prior in any of his numerous conversations with Gordon Hammond or Louis Robinson. The evidence further shows, as above pointed out, that the charge filed by Prior on July 17, 1938 was based upon alleged discrimination against Gilmore and that said charge was voluntarily withdrawn by Prior shortly before, or after, October 8, 1938, because he felt that the alleged violation was no longer being practiced (Tr. p. 427) and because the Board investigator, after investigating the charge, advised him that the evidence was insufficient to warrant the issuance of a complaint (Tr. pp. 484-487).

The portion of Finding No. 32 wherein it is stated that Robinson "according to his own admission, brought Gilmore's name into a conversation he was having at that time with Prior", is contrary to the evidence. As above pointed out in Exception No. 48, Prior testified that he, Prior, brought the name of Gilmore into the conversation referred to (Tr. p.

84) and Robinson testified that he did not recall who first mentioned the name of Gilmore (Tr. p. 2401). Also contrary to the express statement in Finding No. 32, the evidence does not show that Robinson told Prior that he had heard that Prior was working with Gilmore in attempting to organize respondent's employees. Likewise, contrary to the statement in said Finding, the evidence fails to show that Robinson told Prior that Gilmore had not been employed since the spring of 1938.

Findings Nos. 33 and 34, in their entirety, are unsupported by and contrary to the evidence. The evidence shows that Gilmore was not an employee of long standing but, on the contrary, worked only periodically for the Boswell Company and only during seasonal operations. The evidence fails to identify any person named John Hammond.

There was no evidence whatsoever that Gilmore was *persona non grata*, and it is clear that that was not true as shown by the fact that Gordon Hammond twice loaned a trailer to Gilmore after his employment with the company had ceased.

The following portion of Finding No. 34, to-wit:

"The only thing against him being his union activities—for nothing else was shown"

purports to shift the burden of proof from the Board to respondents, which is contrary to law.

The following portion of Finding No. 35, to-wit:

"The undersigned * * * finds that Gilmore was refused reinstatement to his former position with the respondent on July 1, 1938 when the

oil mill reopened, because of his union activities”

is contrary to and wholly unsupported by the evidence, as shown by the evidence hereinabove discussed.

Respondents, and each of them, hereby specify the foregoing as Exception No. 55.

Exception No. 56.

Respondents, and each of them, hereby except to Findings Nos. 36, 37, 38, 39 and 60, and each of them upon the ground that in the respects hereinafter specified said Findings are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and incorrectly and incompletely set forth the testimony relating to the matters therein mentioned.

Finding No. 60 does not contain a complete and accurate statement of the evidence relating to the matters referred to in said Finding. The evidence shows that Farr’s employment was of a seasonal nature depending upon the work to be done at Respondent Boswell Company’s plant.

His first employment was as a ginner in September 1936 (Tr. pp. 260, 303, 310). He continued to work on this job until the ginning season ended in January 1937, (Tr. pp. 260, 261) when he was transferred to the oil mill, where he worked filing saws for two or three months (Tr. p. 260). He then worked at repairing machinery until the mill started again (Tr. pp. 260, 261) at which time he did repair

work and worked as a linterman in the mill. He worked at these last mentioned jobs until July 19, 1937, which was the end of the milling operations (Tr. p. 262).) He admitted that he did not work continuously from September 1936 to July 1937, but had occasional lay offs during said period of time (Tr. p. 310).

On July 19, 1937, Farr quit and went to work for the San Joaquin Cotton Oil Company at Bakersfield. He remained there for about four months and while employed there he worked the same hours and received approximately the same pay as he had previously worked and received at Boswell Company (Tr. pp. 262, and 312).

He returned to Corcoran, asked for work (Tr. p. 314), and was reemployed by the Boswell Company on November 15, 1937 (Tr. p. 262), which was approximately two months after the gins had started operations (Tr. p. 2534). He was hired as a ginner, but only worked as a ginner part of the time, and at other times dried cotton (Tr. p. 262). He worked at these jobs until January 1938, which was the time *all except 2 of* the last of the gins closed down for that season (Tr. p. 2534). He then went to work as a linterman in the oil mill (Tr. p. 263). He testified that he continued as a linterman in the oil mill from that time "until September 28, 1938, at the time the season of that year was completed of crushing seed" (Tr. p. 263). The undisputed and stipulated evidence in this case shows that the oil mill closed March 7, 1938, and did not reopen until May 3, 1938; that

it closed again May 17, 1938, after which it did not reopen until July 1, 1938; that it closed September 27, 1938, at which time the crushing of the 1937 seed had been completed (tr. pp. 2550 and 2551).

About September 26, or 28th, 1938, Farr left work and went to Oklahoma where he stayed until October 15, 1938 (Tr. p. 388, p. 263). Gordon Hammond testified that when Farr was talking with him about going to Oklahoma Farr said he wanted to farm next year and he had a piece of land in view (Tr. p. 2580). Farr admitted that in the fall of 1938 he discussed farming with Gordon Hammond (Tr. p. 386) but later denied that he stated that he intended to farm (Tr. p. 288). When Farr returned on October 15, 1938, he again was employed by the Boswell Company as a ginner and worked until November 18, 1938 (Tr. p. 328). He was carried on the payroll of the Boswell Company to and including December 3, 1938 at which time the gin on which he had been working before he left (Gin No. 2) closed and the job ended (Tr. p. 2547; Board's Exhibit No. 3, Boswell Exhibit No. 20). His pay was continued even though Farr did no work for the Boswell Company after November 18, 1938 (Tr. pp. 375, 376) (Board's Exhibit No. 3). Prior testified that as early as March 15, 1938, he talked with Farr regarding the organization of a union in the Boswell plant (Tr. p. 71). When questioned on cross-examination to bring out the fact that Farr had been openly engaged in union activities since early in 1938, Farr denied the testimony of Prior that he and Prior had discussed union

organization at the Boswell plant but he admitted talking with Prior in March (Tr. pgs. 335, 336).

On July 6, 1938, Farr gave to Prior a list of some of the employees of the Boswell Company for the purpose of calling a union meeting (Tr. p. 300, 333), and, according to Prior, they discussed the organization of employees at the Boswell plant (Tr. pgs. 72, 73).

On September 2, 1938, a union meeting was held at Farr's home, at which he, Martin and Wingo joined the union (Tr. pgs. 80, 81, 341).

After that time Farr invited employees of the Boswell Company to union meetings and they came in response to his invitation (Tr. pgs. 341, 342). He started to talk about the union to other employees who came to the meetings (Tr. p. 338).

On October 8, 1938, while Farr was in Oklahoma, Prior, as union representative, had a conference with Gordon Hammond for the purpose of discussing with Gordon Hammond the reemployment of Farr and certain others (Tr. pgs. 2557 to 2559 and p. 88).

After all of the foregoing, Farr was re-employed about October 15, 1938 and was given steady employment until he left his employment on November 18, 1938.

The portion of Finding No. 37 wherein it is stated that Gordon Hammond had the alleged conversation referred to with Farr "in August or the first part of September, 1938", is an erroneous statement of the evidence. On the contrary, Gordon Hammond

testified that the conversation referred to in said Finding took place about the middle of September (Tr. p. 2574).

Finding No. 37 is not a complete statement of the testimony of Gordon Hammond relating to the matters referred to therein.

Gordon Hammond testified he had received a report from one of the Mexican employees that Farr had approached such employee and one of the other Mexican employees while on the job, and had asked them to sign some paper on the representation that such paper came from the office and Louis Robinson and if it was signed they could not be laid off and would get more money, when, in fact, there had never been any such paper come from the office. (Tr. pp. 2574, 2575).

Gordon Hammond testified that he told Farr of the report which he had received and Farr denied asking the Mexicans to sign any such paper. Gordon Hammond denied that anything further was said in the conversation regarding the union or working conditions (Tr. p. 2574, p. 2575).

Finding No. 36 is unsupported by any substantial evidence is contrary to the evidence and is an incomplete statement of the testimony therein referred to. The portion of Farr's testimony set forth in said finding made no reference to the Mexican employees and Farr denied that Gordon Hammond had, in that conversation, referred to the report from the Mexicans (Tr. p. 328). However, it is significant that a portion of Farr's testimony which is omitted from

the Finding was to the effect that following the conversation, as set forth in said Finding, Gordon Hammond stated that he might have misunderstood those Mexicans because he couldn't understand them very well (Tr. p. 266, p. 327).

The following portion of Finding No. 37, to-wit:

“The undersigned believes the testimony of Farr”

is unjustified either by the manner or demeanor of the witnesses while testifying, or by the testimony as it appears in the record, and is unsupported by the competent and credible evidence.

Farr testified he worked in the oil mill as a linterman from January 1938 until the end of the seed crushing season in September 1938 (tr. 263), whereas the undisputed and stipulated evidence shows that during the period of time he claims he was working at the mill, the mill was in fact closed for a total of about two and one-half months during such time.

Farr claimed that he complained to Gordon Hammond on different occasions that the working hours at the Boswell plant were too long (tr. 265 and 319), but reluctantly admitted upon cross examination that during the four months period that he worked for the San Joaquin Cotton Oil Company at Bakersfield in the summer and fall of 1937, he worked the same hours per day and received approximately the same amount of pay that he had been working and receiving while employed by the Boswell Company (tr. 312).

On direct examination he remembered and testi-

fied in detail to alleged conversations and other matters concerning which he was examined. However, upon cross examination, his answers were evasive and showed lack of observation and memory.

Farr testified that he worked in the gins and elsewhere about the plant both in 1937 and 1938. The undisputed and stipulated evidence showed that considerably over four times as much cotton was handled and processed at the plant in 1937 as in 1938, and that more than twice as many men were employed in the ginning season 1937 as in the ginning season of 1938. In spite of these facts, Farr testified as follows:

“Q. I * * * did you notice any difference between the two seasons, so far as the volume of cotton in the Boswell Plant?

A. I don't know as I paid any attention to it. I had all I could do both times.” (Tr. p. 305).

He was also asked the following questions and gave the following answers:

“Q. Did you notice any difference in the number of men employed at the Boswell Company during the two seasons, that is, as between the '37-'38 season and the '38-'39 season?

A. No, sir, I didn't have any way of knowing the employment of both sides.

Q. I am just asking you for your observation as to the number of men around the plant.

Did it impress you that there were more men during one season than during the other?

A. There were men working last year that never had worked before.”

When this last answer was stricken as not responsive, he testified as follows:

“The Witness: I couldn’t say.

Q. (By Mr. Clark): In other words, so far as you are concerned, you cannot tell us?

A. I couldn’t tell you.

Q. Whether or not you noticed that there were more men in one season than in the other, is that true.

A. I couldn’t say, for I don’t know.” (Tr. 306).

On cross examination Farr at first testified that up to the time of one of his alleged conversations with Gordon Hammond in July or August 1938, he had not told anybody he was attempting to organize the American Federation of Labor Union at the Boswell plant at Corcoran and hadn’t been attempting to organize (tr. 335). Later, on cross examination, however, he was obliged to and did admit that as early as March 1938 he met with Prior (tr. 335), that he also met with Prior again in July, and delivered the list of names of employees furnished by Gilmore (tr. 337). He was asked if he had any meeting with Prior at his house from July clear on until September 2, and replied “I can’t remember of it. I can’t testify to that, for I don’t remember of anything up until about that time.” (tr. 337-8).

When asked on cross examination concerning statements made by various persons present at the meeting which was held November 17, 1938, between Prior, Spear, Martin and Farr, and Gordon Ham-

mond, Farr could remember practically none of the statements which Prior had previously testified were made by various parties at this meeting (tr. 351-3).

Finding No. 38 is based solely upon hearsay and incompetent testimony erroneously admitted over the objection of respondents, and said Finding is unsupported by any substantial, competent and credible evidence. No evidence was introduced showing or tending to show that any authority was conferred upon Tom Hammond to speak for or on behalf of any of the respondents or that he had any such authority.

The respondents, at the time of the hearing, objected to the introduction of testimony by O. L. Farr, regarding an alleged conversation with Tom Hammond during the month of September, 1938, upon the ground that such conversation was hearsay, not binding upon any of the respondents, and with respect to the respondent Boswell Company specifically, that there was no authority shown in the record from the Company to Tom Hammond to speak for it with relation to any of the matters under investigation in this proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (tr. pp. 274-5). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of said objections. Respondents, and each of them, hereby restate and incorporate herein, with the same effect as though stated herein in full, Exception No. 54. The evidence further

shows that Farr was re-employed by the Boswell Company on October 15, 1938, which was after the alleged conversation referred to in said Finding is claimed to have occurred.

Finding No. 39 is based solely upon hearsay and incompetent evidence erroneously admitted over the objection of respondents, and it is not supported by any competent and credible evidence. No evidence was introduced which shows or tends to show that any authority was conferred upon Joe Hammond to speak for or on behalf of any of the respondents or that he had any such authority. Respondents duly interposed an objection to the question calling for the testimony referred to in said Finding upon the grounds that the testimony sought to be elicited was hearsay, incompetent, irrelevant, and immaterial, not binding on any of the respondents, particularly on the respondents Exchange and Associated Farmers, are not binding on the respondent Boswell Company for the reason that no authority had been shown from the Company to Mr. Joe Hammond to speak for it with relation to the matters under investigation in said hearing. This objection was overruled by the Trial Examiner and an exception was taken thereto (tr. 267-8). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection. The undisputed evidence also shows that both Tom Hammond and Joe Hammond had been expressly instructed by Gordon Hammond, plant superintendent, as early as September 1938, not to

say anything to any of the employees about the union and had informed them that the employees had a right to join a union (Tr. p. 2563). This same information regarding the right of the men to join any union they chose was also stated to Prior, Spear, Martin and Farr during their various conversations with Gordon Hammond and Louis Robinson (Tr. pp. 2405-2406; 2440).

The evidence further shows that Farr was re-employed on October 15, 1938, after the time when said alleged conversation was claimed to have occurred.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 56.

Exception No. 57.

Respondents and each of them hereby except to the whole of Finding No. 40, page 22 of the intermediate report, except the last sentence thereof in which it is stated that "Gordon L. Hammond denied he received such a letter from J. G. Boswell", upon the ground that the portion of said finding above excepted to is based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of respondents, and upon the ground that said portion of said finding is contrary to the evidence and not supported by the competent and credible evidence, and upon the ground that said portion of said finding is an incomplete and inaccurate statement of the testimony.

Evidence shows that R. K. Martin was first employed by the Boswell Co. on September 16, 1930 (Tr. p. 515). He started working in the pressroom in the

gin tying cotton and was paid 30c per hour (Tr. pp. 515 and 516). He worked until April 1, 1931, at which time he quit and went back to Georgia (Tr. p. 516). He did not return to apply for work until August 4, 1934, at which time he was again employed by the Boswell Co. (Tr. p. 516). At that time he worked stacking grain in the warehouse for about two weeks and then did odd jobs until the ginning started in September, 1934 (Tr. p. 517), when he worked as pressman in the gin and received 35c per hour (Tr. p. 518). He continued that work until the end of the ginning season in January or February 1935 (Tr. p. 518), and then he did outside odd jobs with layoffs a few days at a time until June, 1935, when he worked as a helper in the expeller room in the oil mill (Tr. pp. 518 and 519). He testified that he has done that work ever since, except that he ginned a few days (Tr. p. 519). He later testified that in September, 1937, he quit again and took a job with another firm where he worked until March of 1938 (Tr. pp. 520 and 521, p. 546). He was again employed at the Boswell Co. in March, 1938, and worked for about two weeks when he was laid off. At that time he went to Colorado and did not return to the Boswell Co. until about May 17, 1938 (Tr. p. 522, pp. 546 and 547, pp. 579 and 580). He then worked repairing machinery in the oil mill for about 20 or 30 days until the mill started and then he worked in the mill (Tr. p. 548).

Martin joined the union on September 2, 1938 (Tr. p. 522).

After September 2, 1938, he took an active part in union organization and the solicitation of members. He talked with numerous employees regarding joining the union (Tr. p. 550). He attended various union meetings during the summer and fall and took prospective members with him. He talked about the union with a lot of the employees (Tr. p. 551).

When the mill closed on September 27, 1938 (Tr. pp. 2550 and 2551), Martin was laid off (Tr. p. 548). Gordon Hammond testified that Martin told him he expected a job at a mill at Kingsburg and asked Gordon Hammond to let him know when the superintendent called for him (Tr. pp. 2558 and 2559). This testimony was substantially confirmed by Martin (Tr. pp. 548 and 549; see correction in stipulation dated July 6, 1939).

On October 8, 1938, as above discussed, Prior, as union representative, had a conference with Gordon Hammond for the purpose of discussing the re-employment of Martin and certain others (Tr. pp. 2557 to 2559, and p. 88).

Some time in October 1938, which date has been fixed by L. A. Spear as between the 5th and 10th of October, Martin, Farr and Spear, acting as a union committee, called upon Gordon Hammond to discuss hours and working conditions (Tr. pp. 885 and 886, and pp. 902 and 903).

After all the foregoing, Martin was re-employed by the Boswell Co. on October 10, 1938, at which time his pay was raised from 40 to 50c per hour (Tr. pp. 520 and 549). His work at that time consisted

of ginning (Tr. p. 520) and he was given steady employment from that date until he left the Boswell plant on November 18, 1938 (Tr. p. 549). He was carried on the payroll of the Boswell Co. until November 26, 1938, at which time the gin on which he had been working before he left (Gin No. 4) had closed and the job ended (Tr. p. 553, p. 2549; Board's Ex. No. 3; Boswell Exhibit No. 17; Tr. pp. 567 and 568). His pay was continued until November 26th even though Martin did no work for the Boswell Co. after Nov. 18, 1938 (Tr. p. 568).

Respondent duly interposed objections to the questions calling for the testimony upon which the above specified portion of Finding No. 40 is based. Said objections were based upon the ground that the questions referred to called for hearsay and incompetent evidence which was not binding in any way upon any of the respondents and was not authorized and no proper foundation laid. The trial examiner erroneously overruled said objections and permitted the testimony upon which said portion of said finding is based and respondents duly excepted thereto (Tr. p. 523, lines 11-18, p. 524, lines 3-5). Respondents also moved to strike said testimony upon the same grounds, and the trial examiner erroneously denied said motion to strike and respondents duly excepted thereto (Tr. p. 524, l. 23, to p. 525, l. 1). No evidence was introduced which showed or tended to show any authority conferred upon Tom Hammond to speak or act for or on behalf of any of the respondents or to show that he had any such author-

ity, and said hereinabove specified portion of said Finding No. 40 is wholly unsupported by any competent evidence.

The evidence further shows, as above mentioned, that on October 10th, after the time when the alleged conversation above mentioned is claimed to have taken place, Martin was re-employed and his wages were raised.

The complete unreliability of Martin's entire testimony is demonstrated by the inconsistencies and conflicting statements, some of which are as follows:

When questioned concerning the union meeting which was held the night of November 16, 1938, Martin testified there were some 18 or 20 persons present at said meeting, but he could name only nine of them, notwithstanding the fact that he was secretary of the union and had kept minutes of the meeting (tr. 556-8). Among the nine persons present who were named by him was E. C. Ely (tr. 556). When Martin was testifying later in the hearing, in connection with the Board's alleged case against the Associated Farmers, and was asked if E. C. Ely was present at said meeting of November 16, he first testified as follows:

"A. I don't remember about that meeting, whether he was or was not.

Q. Would you say he wasn't there?

A. He wasn't there during the meeting, I know.

Q. Well, would you say that he wasn't there sometime during the gathering?

A. No, wouldn't say he wasn't". (tr. 1753).

The evidence shows without dispute that on November 17, Prior and the union Committee consisting of Spear, Farr and Martin met with Gordon Hammond (Tr. p. 125), and Prior testified that he reported the result of this meeting to a union meeting which was held on the night of November 17, 1938 (Tr. p. 475). However, when Martin was asked upon cross examination if a union meeting was held on the night of November 17, 1938, he testified he did not remember whether or not such a meeting was held (Tr. p. 559).

On cross examination, Martin testified that when he went to Colorado, after having worked about 2 weeks in March 1938, for the Boswell Company, he came back to Corcoran and went to work about May 17, 1938. When asked if the oil mill had started before he got back, he testified that it was not running when he got there and hadn't been for some time before (Tr. p. 547). However, the undisputed and stipulated evidence shows that the mill was running May 17, 1938 and closed down that day and reopened again July 1, 1938 (Tr. p. 2551).

Respondents and each of them hereby specify all the foregoing as Exception No. 57.

Exception No. 58.

Respondents, and each of them, hereby except to Finding No. 41, upon the ground that said Finding is contrary to and unsupported by the evidence, and is based solely upon hearsay and incompetent evidence erroneously introduced over the objections of

the respondents. Respondents duly interposed an objection to the question calling for said testimony upon the ground that it called for hearsay and was not binding upon any of the respondents, no authority having been established from the respondents to Tom Hammond to speak for them with respect to any of the matters under investigation in this case, and upon the ground that it was incompetent, irrelevant and immaterial. The trial examiner erroneously overruled this objection (Tr. p. 1292, ls. 11-17) and permitted this testimony to be introduced to which respondents duly excepted and do hereby except. Likewise, Finding No. 41 does not correctly state the testimony which was erroneously introduced as above stated (see Tr. p. 1292, ls. 18-25). In connection with the alleged conversation the evidence showed that Griffin's own testimony was that he joined the union on Nov. 15th or 16th, 1938, which was 9 or 10 days after said alleged conversation is claimed to have occurred. There was no evidence introduced which showed, or tended to show, that respondents conferred any authority upon Tom Hammond to speak or act for or on behalf of any of the respondents or that he had any such authority.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 58.

Exception No. 59.

Respondents, and each of them, hereby except to Finding No. 42, page 23 of the Intermediate Report, upon the ground that said Finding is irrelevant to

the issues in this case, and upon the ground that the statements in said Finding referring to conversations related therein are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents, and upon the ground that said Finding is unsupported by and contrary to the competent and credible evidence.

George Hammond referred to therein has never been identified in the record. No evidence was introduced showing or tending to show any authority conferred by respondents upon any of the persons mentioned in said paragraph except Louis T. Robinson and Gordon L. Hammond to speak or act for or on behalf of any of the respondents or showing that any of said persons except Louis T. Robinson or Gordon L. Hammond had any such authority.

Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Any of the persons named in said Finding who were available to the respondent were equally available to the Board but the Board chose to rest its case on remote uncorroborated hearsay evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 59.

Exception No. 60.

Respondents, and each of them, hereby except to Finding No. 43, pages 23 and 24 of the Intermediate Report, upon the ground that it is contrary to the evidence and unsupported by any competent and credible evidence, and upon the ground that the con-

clusions of the Trial Examiner therein stated are unwarranted and unsupported by the evidence.

The undisputed evidence shows that Gordon Hammond is Plant Superintendent at the Corcoran Plant and has been for about 14 years last past; that no one in Corcoran, other than Louis T. Robinson and Gordon L. Hammond, is authorized to speak for the Boswell Company with respect to any matter concerning its business (Tr. p. 2395), or to bind the company; that Mr. Hammond has charge of the manufacturing end of the plant and is in charge of labor in the plant (Tr. p. 2396), and there is no one at the Corcoran Plant, other than Louis T. Robinson or Gordon Hammond, who has authority from the Boswell Company to employ or discharge any of the employees (Tr. p. 2397).

The evidence also shows that none of the alleged supervisory employees named in said Finding is classified as, or has or occupies the position of, foreman at the plant, and that they, and each of them, as well as all other employees at the plant, are under the direct supervision and control of Gordon L. Hammond, Plant Superintendent, and that whatever acts or things are done by them in connection with their work are done at the direction and under the supervision of Gordon L. Hammond. The evidence shows that these facts were known to, and recognized by, all of the employees as illustrated by the following instances, among others, to wit:

The testimony of Spears himself shows that he recognized this fact, as he testified that on the morn-

ing of November 18, after Mr. Louis T. Robinson had instructed all of the men to return to work, he left the office and returned to No. 1 gin; that he saw Kelley Hammond, Bill Robinson, and Joe Hammond there, but after he found the non-union men apparently would not work with the union men, he sat down on the stairs; that he was stalling for time and waiting for somebody to come around, but Louis T. Robinson did not come out (Tr. p. 884). He also testified, on cross-examination, that he saw Joe Hammond at this time while he, Spear, was still waiting for Mr. Louis Robinson (Tr. p. 989).

R. K. Martin testified that, after he returned from the office to the gin on the morning of November 18, 1938, he talked with Bill Robinson, who told him Tommy Hammond had said not to start the engines yet, that it seemed like either the union men run the plant or the non-union, and the non-union employees were not going to work with him, and asked what he, Martin, was going to do. Martin replied "If Mr. Hammond and Mr. Louis Robinson comes down here and says 'go home', all right, but until they do we won't" (Tr. p. 538-40). On cross examination, Martin again repeated this statement, testifying that he told Bill Robinson "That we would go home if Mr. Hammond or Louis Robinson said to go home" (Tr. p. 562, 563). He testified he was referring to Gordon Hammond. (Tr. p. 563).

Prior himself testified that one of the reasons that he called upon Gordon Hammond on November 17, 1938 was "we wanted a clarification by someone in

charge as to "the exact status of Tom Hammond and Joe Hammond, and whether they were authorized to give orders after orders had been given them by Gordon Hammond (Tr. p. 467). Gordon Hammond informed him that Tom Hammond and Joe Hammond were not authorized to hire or fire anybody or to make any statements against the union (Tr. pp. 468 and 474).

Respondents, and each of them, hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 60.

Exception No. 61.

Respondents, and each of them, hereby except to Findings Nos. 44 and 45, pages 24 to 26 of the Intermediate Report, upon the grounds that certain portions of said Findings are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and are incomplete and inaccurate statements of the evidence.

L. E. Ely was first employed by the Boswell Company in September or October of 1936 and he worked at that time as a hay cutter, receiving 30c per hour (Tr. p. 1189). He was laid off after working two months and was not re-employed until September, 1937, at which time he worked around the gins and sacking the seed and was paid 35c per hour (Tr. pgs. 1189, 1190). The gins commenced operations about

September 20, 1937 (Tr. p. 2534). He worked at that type of work until November of 1937 and then worked as press helper on No. 4 gin from November until February, 1938 (Tr. p. 1190). The undisputed evidence shows that the ginning of the 1937-38 cotton was completed the latter part of February, 1938, when the last of the gins was closed for that season (Tr. p. 2534-7). After the last of the gins closed down he did odd jobs in the gin and out in the yard and hauled sand, and continued this type of work until March 9, 1938, at which time he was laid off.

He testified that he was re-employed about June, 1938 and worked in the lint room of the oil mill, receiving 35c per hour (Tr. p. 1191). He testified that he did that work for two weeks and was then laid off again (Tr. p. 1191). The undisputed and stipulated evidence shows that the oil mill did not operate between May 17, 1938 and July 1, 1938 (Tr. 2551), and Board's Exhibit No. 3 shows that Ely was re-employed in May rather than June, as Ely testified. Ely was re-employed in July and worked at baling straw. He testified he did that work about six weeks and was again laid off (Tr. p. 1192). Board's Exhibit No. 3 shows that he worked on this occasion only until the week ending August 4. Ely testified that he went to Texas about the 1st of October and returned about October 15, 1938 (Tr. pp. 1246, 1247). After this lay-off, he testified that he was re-employed in October, 1938 (Tr. p. 1999), and Boswell's Exhibit 9 (a) and Board's Exhibit 3, shows that he was in fact re-employed on October 24, 1938. The undis-

puted evidence showed that the oil mill started that day.

The evidence shows that he continued to work until November 16, 1938, at which time he ceased working because of an injured thumb. The evidence also shows that he joined the union on November 11, 1938 (Tr. p. 1200).

The complaint, paragraph 10 thereof, contained an allegation that the pay of L. E. Ely was reduced because of his union activities. The Trial Examiner found that this allegation was not sustained by the proof, but the testimony of Ely in that regard is material in considering his credibility.

Ely testified, positively, that he received 40c per hour when he was re-employed in October, 1938 (Tr. p. 1192, p. 1220), that he worked for five days as press helper and then substituted for a sick pressman for two weeks (Tr. pp. 1192, 1193), and that he received 40c per hour as pressman (Tr. p. 1220). He stated that he then resumed his job as press helper and he testified that during the week of November 12, 1938 his pay was reduced to 35c per hour, that he discovered that fact when he received his pay check for that week, and that he received only one check at the rate of 35c per hour (Tr. p. 1193, p. 1232, p. 1220).

Even when Ely was shown his time cards he insisted that he was receiving 40c per hour when he first went back to work (Tr. p. 1225), and that he knew how much he was paid (Tr. p. 1226). He said he kept a record of his time and handed it to Gordon

Hammond (Tr. p. 1227) and that his check for the last week he worked was not based upon the 35c per hour basis.

Also he insisted that he left work on November 14, 1938. Even when he was shown his time cards (Tr. p. 1233), he denied working November 15th or 16th (Tr. p. 1233, p. 1234).

The testimony of Gordon Hammond (Tr. p. 2507 to p. 2523) and the records (Boswell's Exhibits 9(a) to 9 (d), inclusive) showed conclusively that Ely started work on October 24, that he worked one day as press helper and was paid 35c per hour, that he worked seven days as pressman and received 40c per hour, after which he resumed his job as press helper on November 3rd and was again paid 35c per hour for that day and for the two following weeks. The Examiner found substantially in accordance with these facts. Gordon Hammond's testimony and the records also show conclusively that Ely worked up until November 16 with only two hours credited to him on November 16, because that is the day he left as a result of an injured thumb.

Ely sustained an injury to his thumb about November 5 or 6, 1938 (Tr. pp. 1199, 1240) as a result of which he left work on November 16, 1938 (Tr. pp. 1198, 1199). He testified that he received compensation insurance payments for two days at some time after he left his work (Tr. p. 1241), and the evidence shows, by Ely's own admission, that he never applied for work again at the Boswell Company (Tr. p. 1206).

On November 28, 1938, Ely was still absent from the plant with his injury, and the gin upon which he was working (Gin No. 4) had shut down on November 26, 1938. Since Ely was not at the plant, a registered letter was sent to him (Board's Exhibit No. 9), informing him of the fact that the job upon which he had been working was completed and that his employment was terminated. The evidence shows conclusively that he was laid off because of lack of work, and this is in full accord with his employment and lay-offs in prior years since his entire employment had been merely the performance of seasonal work and odd jobs.

No evidence was introduced which showed or tended to show that the management of the Boswell Company ever had any knowledge of Ely's union affiliations.

The following portion of Finding No. 44, to-wit:

"Ely has not been recalled to his work by the respondent even though he has fully recovered from his injury"

is entirely unsupported by any competent and credible evidence. There is no evidence in the record to show that there was any agreement on the part of the Boswell Company to recall Ely to work at any time.

There is no evidence in the record to show that Ely recovered from his injury or when he recovered, except hearsay and incompetent testimony regarding statements made by Ely's doctor to Ely, which testimony was erroneously introduced over the ob-

jections of respondents. Respondents duly interposed objections to the questions calling for said testimony, upon the ground that said questions called for hearsay and incompetent evidence, and the Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which ruling respondents duly excepted, (Tr. p. 1209, lines 7 to 16; p. 1210, lines 10 to 12; p. 1210, lines 24 to 25). Respondents also moved to strike said testimony from the record, which motion was erroneously denied by the Trial Examiner to which ruling respondents duly excepted, (Tr. p. 1210, lines 1 to 6).

The respondents, at the time of the hearing, also objected to the introduction of testimony by L. E. Ely regarding his alleged conversation, about November 14, 1938, with Dr. Edmonds, relative to his injury, on the ground that it was incompetent, irrelevant, immaterial and hearsay. The Trial Examiner overruled the objection and an exception was taken thereto. (Tr. p. 1198). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The respondents, at the time of the hearing, also objected to the introduction of testimony by L. E. Ely, regarding his alleged report to the Hammond boys, about November 14, 1938, regarding his injury and the statements the doctor had made to him, on the ground that it was incompetent, irrelevant and immaterial, had no bearing on the issues in the case

and did not involve discrimination against anyone for having joined the union. This objection was overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1198). Respondents, and each of them hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The following portion of Finding No. 44, to-wit:

“The respondent * * * on cross-examination admitted that the usual practice of the respondent in cases of lay-offs has been, and was at the time of the hearing, that the individual employees laid off would be advised before they left the plant that they would be notified when needed. Ely was never notified to return to work”

is contrary to and unsupported by the evidence. There is no evidence in the record to support such statement regarding the usual practice of respondent and, in fact, Ely himself testified that before his lay-off in November, 1938, he had at times gone to the plant in person and applied for work (Tr. p. 1211).

He also testified that when he returned from Texas in October, 1938, he applied to Gordon Hammond for work (Tr. p. 1249).

The portion of Finding No. 44 relating to an alleged conversation between L. E. Ely and Tom Hammond is based solely upon hearsay and incompetent testimony which was erroneously introduced over the objections of respondents. Respondents duly interposed objections to the question calling for said testimony upon the ground that said questions called

for hearsay and incompetent testimony, and the Trial Examiner erroneously overruled said objections (Tr. p. 1194, lines 10 to 17, p. 1195, lines 11 to 12; p. 1195, line 21 to p. 1196, line 1), and respondents duly excepted to such rulings. Respondents, and each of them, hereby except to all of such rulings.

The following portion of Finding No. 45, page 25, to-wit:

“In fact, never before had such a letter been sent out to a laid-off employee”

is wholly unsupported by and contrary to the evidence.

The following portion of Finding No. 45, to-wit:

“However, the undersigned finds that Ely’s discharge became effective on November 26, 1938, and that he was refused re-employment by respondent because of his membership and union activities in Local 21798”

is entirely unwarranted and unsupported by the competent and credible evidence and contrary to the evidence, as above set forth. There was no evidence that Ely at any time applied for work after November 14, 1938, (Tr. p. 1206) and there was no evidence that the Boswell Company had work available for him at any time after November 26, 1938.

Respondents, and each of them, hereby specify the foregoing as Exception No. 61.

Exception No. 62.

Respondents, and each of them, hereby except to Finding No. 46, page 26 of the Intermediate Report,

upon the ground that said Finding is an incomplete and inaccurate statement of the matters therein referred to, and respondents hereby except to the portions of said Finding hereinafter designated, upon the ground that they are contrary to and unsupported by the credible evidence, and upon the ground that they are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents.

Winslow testified on direct examination that he first started to work for the Company in September, 1935, as a hay cutter at thirty cents an hour, and that thereafter he worked for the Company off and on until November, 1938, and that during the course of such employment he did the following different types of work: worked in the cattle corrals, seed house, oil mill, warehouse, and outside work (Tr. p. 1042), and that when he last worked in 1938 he was receiving forty cents an hour (Tr. p. 1043). He testified that up until 1938 he did not have any lay-offs of more than one month in extent, but when the mill shut down in March, 1938, he was laid off for about a month, then he went back to work and chopped weeds for about a couple of weeks, but only worked part time during the summer of 1938, probably a week on and a week off (Tr. p. 1043), and he did not start to work steadily again until the gin started about the latter part of September, 1938. When the gin started he worked outside the gin feeding suction for about two weeks, and was then laid off for five days, and started work in the oil mill chasing lint,

and continued on this last mentioned job until the oil mill closed and he was laid off November 15, 1938, (Tr. p. 1044). On cross examination he admitted he had done "a little bit of everything" (Tr. p. 1089). He testified that he was not initiated into the Union until November 16, 1938, and that he never attended any union meetings until that date. (Tr. pp. 1054, 1083).

The evidence shows that Winslow has never applied for work since his lay-off on November 15, 1938, (Tr. p. 1086).

The portion of said Finding wherein it is stated that in September, 1938, Winslow was "recalled" to work is contrary to the evidence. The testimony of Winslow in this regard was that he started to work for the Company when the gin started about the latter part of September, 1938. (Tr. p. 1044).

The portion of said Finding No. 46 relating to an alleged conversation between Tom Hammond and Winslow is based solely upon hearsay and incompetent testimony, which was erroneously introduced over the objection of respondents. Respondents, and each of them, duly interposed objections to the questions calling for said testimony upon the ground that said questions called for hearsay and incompetent evidence. The Trial Examiner erroneously overruled said objections, and respondents duly excepted thereto. (Tr. p. 1080, lines 12 to 14; p. 1080, lines 4 to 7). Respondents, and each of them, hereby except to such rulings.

The foregoing testimony which was erroneously

introduced related to an alleged conversation on November 13, 1938, in which Winslow claimed to have told Tom Hammond that he had joined the Union. The evidence, as above stated, was that Winslow was not initiated into the Union until November 16, 1938, and that he had not attended any Union meetings until that date, which was after he was laid off. (Tr. pp. 1054, 1083).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 62.

Exception No. 63.

Respondents, and each of them, hereby except to Finding No. 47, page 26 of the Intermediate Report, upon the ground that said Finding is unsupported by any competent and credible evidence, and upon the ground that it is based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and upon the ground that said Finding is irrelevant to the issues of this case.

The Respondents, at the time of the hearing, objected to the introduction of testimony by Walter Winslow, regarding each of the alleged conversations with Tom Hammond on November 15, 1938, referred to in said Finding, upon the ground that such conversations were hearsay and not binding on any of the respondents, and on the further ground that there was no authorization shown for Tom Hammond to speak for the Company. Each of these objections was overruled by the Trial Examiner, and an exception taken thereto (Tr. p. 1045-9). Respondents,

and each of them, hereby except to such rulings upon the grounds above stated which were urged in support of their objections.

The portion of said Finding wherein it is stated that Tom Hammond was foreman of the gin department is contrary to the evidence, as has been above pointed out. No evidence was introduced showing, or tending to show, any authority having been conferred by respondents, or any of them, upon Tom Hammond to act or speak for or on behalf of any of the respondents or that Tom Hammond had any such authority.

The evidence shows that the shut-down of the mill on November 15, 1938, was a normal shut down due to shortage of cotton seed for crushing, and was not in anywise due to the Union or any of its activities.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 63.

Exception No. 64.

Respondents, and each of them, hereby except to Finding No. 48, pages 26 and 27 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony which is not binding upon any of the respondents and which was erroneously introduced over the objections of respondents, and upon the ground that said Finding is irrelevant to the issues of this case.

The respondents, at the time of the hearing, objected to the introduction of testimony by Winslow, regarding his alleged conversation with Joe Hammond on the evening of November 15, 1938, referred

to in said Finding, upon the ground that such conversation was hearsay and not binding on any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. 1050-1). The respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The Respondents, and each of them, specify all of the foregoing as Exception No. 64.

Exception No. 65.

Respondents, and each of them, hereby except to Finding No. 49, page 27 of the Intermediate Report, upon the ground that said Finding is an incomplete and inaccurate statement of the evidence referred to therein.

Boyd L. Ely was first employed by the Company about July 22 or 24, 1936, as a hay cutter at 30c per hour. He worked at this job until about the latter part of February, 1937, when he was transferred to the mill and, shortly before such transfer, his pay was raised to 35c an hour. He worked in the mill, until the latter part of May, 1937, and then he quit and took a job in the grain harvest, because it looked like there wouldn't be too much work at the plant. He worked at this job in the grain harvest for about sixty or seventy days (Tr. pp. 1155-6, 1174-5). He then came back and saw Gordon Hammond about a job, but did not start back to work for the Company until September, 1937. He then worked sewing sacks until about March 24, 1938, during which time he

received 40c an hour. He then left or was laid off and was again re-employed about the first part of April, 1938. (Tr. p. 1157). This time he was given a job running pumps out in the lake until sometime in May, when he returned to the plant and sewed sacks for a couple of days. (Tr. p. 1158). In May he left the company again and worked in the harvest and was again re-employed by the company about July, 1938 (Tr. p. 1174, p. 1158). At that time he was put to work sewing sacks for a short time, during which time he was paid 40c per hour. He was then transferred to the lint room and his pay was reduced to 35c per hour for the reason that the job paid less (Tr. pp. 1172, 1173). He was laid off about September 28, 1938, (Tr. p. 1172).

Boyd Ely joined the union September 5, 1938, (Tr. p. 1177).

After Ely was laid off in September, Prior, as union representative, held a conference with Gordon Hammond to discuss the re-employment of Boyd Ely and others who had been laid off (Tr. pp. 88, 2557 to 2559).

After the foregoing conferences, Ely was re-employed about October 15, 1938, and at that time his pay was raised from 35c to 45c per hour (Tr. p. 1173). Ely testified that he knew of this conference which Prior held with Gordon Hammond and that he understood that his re-employment was the result thereof (Tr. p. 1176).

When Ely was re-employed in October he was put to work sewing sacks and continued doing that work at the increased rate of pay until he was laid off on the night of November 14, 1938 (Tr. p. 1174).

Boyd Ely has never applied for work since November 15, 1938. (Tr. p. 1171).

The evidence, and Boyd L. Ely's employment record, conclusively show that he was merely a seasonal employee engaged in the performance of seasonal work from time to time, and that the termination of his employment on November 15, 1938, was due solely and entirely to the close of the oil mill on that date and the lack of further employment; that the oil mill was closed on that date because of the shortage of seed to process and that the closing thereof was a normal event.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 65.

Exception No. 66.

Respondents, and each of them, hereby except to Finding No. 50, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the further ground that the evidence shows that Tom Hammond had no authority to speak for or in any wise bind the Company with respect to any of the matters mentioned in the alleged conversation referred to in said finding, if in fact there was any such conversation.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Butcher and White in July, 1938, referred to in said Finding,

upon the ground that it was hearsay and not binding upon any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1160). Respondents and each of them hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, at the time of the hearing, also objected to the introduction of testimony by Boyd L. Ely regarding his alleged conversation with Tom Hammond in July, 1938, referred to in said Finding, upon the ground it was hearsay. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1162). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The undisputed evidence shows that subsequent to the alleged conversations respecting the Union referred to in said Finding Ely was in fact re-employed by the Company about the middle of October, 1938, at an increased wage. (Tr. p. 1173).

In spite of Ely's testimony regarding certain alleged conversations, which was erroneously admitted in evidence, the unreliability of his testimony is indicated by the following:

He was asked on cross-examination if he attended the union meeting on November 19, 1938, at which the boycott was declared against the Company, and stated "I think I did." He admitted that he had been taking part in the boycott and had also been

on the picket line (Tr. pp. 1177-1178). When asked to state what was said and done at the meeting at which the boycott was declared, he could not remember. (Tr. p. 1182).

The Respondents, and each of them, specify all of the foregoing as Exception No. 66.

Exception No. 67.

Respondents, and each of them, hereby except to Finding No. 51, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the ground that there was no evidence that Clyde Sitton was authorized to speak for or in any wise bind any of the respondents with respect to any of the matters mentioned in the alleged conversation referred to in said finding. On the contrary the evidence showed without dispute that Sitton was merely a fellow employee and had no authority whatever to speak for the Company with respect to any of said matters, if in fact the alleged conversation was had.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Clyde Sitton, in October, 1938, referred to in said Finding, upon the ground of hearsay, also that it was incompetent, irrelevant, and immaterial, no authority having been shown or established from Boswell Company to Mr. Sitton to speak for it with regard to

any of the matters under investigation in the proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1163). Respondents, and each of them, hereby except to such ruling upon the grounds above stated, which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 67.

Exception No. 68.

Respondents, and each of them, hereby except to Finding No. 52, page 27 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, upon the ground that said Finding is irrelevant to the issues of this case, and upon the ground that no authority was shown or established from any of the respondents to Joe Hammond to speak for them, or any of them, with regard to any of the matters involved in this proceeding.

The respondents, at the time of the hearing, objected to the introduction of testimony by Boyd L. Ely, regarding his alleged conversation with Joe Hammond, on November 14, 1938, referred to in said Finding, upon the grounds that it was incompetent, irrelevant, immaterial and hearsay. The objection was erroneously overruled by the Trial Examiner and an exception was taken thereto (Tr. p. 1159). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all the foregoing as Exception No. 68.

Exception No. 69.

Respondents, and each of them, hereby except to Finding No. 53, pages 27 and 28 of the Intermediate Report, upon the ground that said Finding and the conclusions of the Examiner stated therein are unsupported by and are contrary to the evidence and upon the ground that said Finding incompletely and inaccurately states the testimony in the respects hereinafter specified.

The evidence shows without dispute that neither Boyd Ely nor Walter Winslow was locked out of his employment and that his employment was not terminated by reason of his membership in the union or by reason of his union activities. In fact, Winslow himself testified that he was not initiated into the Union until November 16, 1938, and that he had never attended a Union meeting prior to that time (Tr. pp. 1054 and 1083).

The undisputed evidence shows that the 1938-1939 season was very short due to shortage of cotton to gin and the shortage of seed to crush in the mill, and that there was a consequent shortage of employment. This fact was recognized by all employees. The oil mill operated only periodically as there was seed available to be crushed and as market conditions and demand for oil and by-products of the seed justified the operation of the mill.

The undisputed evidence shows that the total tonnage of seed received at the mill for crushing from

the 1938-9 season was only 5,668 tons, as against 23,716 tons in the preceding season (Tr. pp. 2544-5).

The undisputed evidence also shows that the oil mill did not start on the crushing of the 1938 seed until October 24, 1938, and that it closed November 15, 1938 (Tr. 2551).

During the period of over six months which had elapsed at the time of the hearing in this case since the mill had been closed down in November, the evidence showed that the mill had operated only fourteen days in all. These operations took place in three short, sporadic runs and the mill was only operated on these occasions because of hot seed or a shortage of feed (Tr. pp. 2551, 2552, corrected pp. 2599, 2600).

The evidence also shows that at the time the mill was closed several of the non-union employees were laid off, as well as Winslow and Boyd Ely (Tr. p. 1097-1098). Winslow admitted this.

The undisputed evidence also shows that a few days prior to the opening of the oil mill on October 24, 1938, Gordon Hammond, at the direction of Louis Robinson, general manager of the plant, circulated a list among the oil mill employees asking them to signify their preference for the opening of the mill and their preference between a twelve-hour shift and an eight-hour shift (Boswell's Exhibit No. 8). It was stated in the letter attached to and made a part of said list that there would be a very short crush that season by reason of the cotton shortage and that the management of the company had no particular preference as to when the seed was crushed, and, in fact, there was no necessity for crushing the same at that

time. It is clearly shown by this letter that the company was willing to open the mill solely for the purpose of affording additional employment for its men and that in order to prolong such employment as much as possible to was willing, if the men so desired, to operate on an eight-hour shift. This letter, together with the list, was presented to the oil mill employees and was signed by them and they unanimously indicated a preference for a twelve-hour shift. Among those who signed this list were Winslow and Boyd Ely.

When Gordon Hammond presented this list to Winslow he explained to Winslow that they had only a few days milling to do and the company desired to know if the boys wanted to work twelve hours or eight hours and Winslow said he would rather work twelve hours (Tr. p. 2619).

Boyd Ely testified that he knew that the season was short (Tr. p. 1178), that Gordon Hammond told him it was immaterial to the company whether they worked eight or twelve hours (Tr. p. 1186), and that Ely signed for the twelve-hour shift voluntarily (Tr. p. 1186).

The evidence shows that as a result of this preference on the part of the employees, the crushing of the cotton seed then on hand was commenced October 24, 1938 and was completed November 15, 1938, on which last mentioned date the mill closed, and Winslow and Ely were laid off, solely because of lack of any further work for them to do.

The evidence also shows that Winslow and Ely did not, nor did either of them, apply for work at any

time after they were laid off on November 15, 1938. (Tr. p. 2636). They both admitted this to be a fact (Tr. pp. 1086; 1171).

The evidence also shows that it would have been physically impossible for the Boswell Company to have retained in its employ all of the persons who had previously worked for it, and that it was impossible to keep them working after the cotton and seed which were available had been exhausted.

The conclusion of the Trial Examiner in said Finding that Winslow and Boyd Ely were not laid off because of lack of cotton is unsupported and unjustified by the evidence.

The portion of said Finding referring to certain employees which, it is stated, were new employees, is an inaccurate and incomplete statement of the facts. In this respect the undisputed evidence shows as follows:

Douglas Caffell was first employed by the Boswell Company in September, 1938, was a cowboy who worked at the Reden Ranch, which was leased and operated by the company as a cattle ranch. He worked regularly as a cowboy and had never worked at the company's Coreoran plant (Tr. p. 2661, p. 2778). Furthermore, the statement in said Finding that he was paid \$75.00 per week is incorrect. His salary, as shown by Board's Exhibit No. 3, was a monthly salary of \$75.00 per month.

Al Chestnut never worked at the Boswell plant at any time and he was not an employee of the

Boswell Company. He was an employee of Peterson Farms Company. In the latter part of the year 1938 the Boswell Company contracted to pump the water off the land in Lovelace Reclamation District in which Peterson Farms Company is located. According to the terms of this contract the reclamation district was to furnish the men to supervise the operation of the pumps and Al Chestnut was one of the men furnished by the district. However, the district did not have any compensation insurance, so Al Chestnut was carried on the Boswell Company's payroll to keep him covered by compensation insurance and settlement was made therefor upon the completion of the contract (Tr. p. 2450).

Lee Chestnut was also carried on the company's payroll at the same time and under the same circumstances as Al Chestnut and he likewise was never employed by the Boswell Company and never worked at the Corcoran plant (Tr. p. 2451).

Contrary to the statement in said Finding, Andrew Clark had previously worked for the company, commencing in September, 1937, and was originally employed as a carpenter (Tr. p. 2656, Boswell's Exhibit No. 23 (c)).

The statement in said Finding that "other new employees" were taken on by the respondent during the last half of 1938 and the first half of 1939, is inaccurate and misleading. The persons whose names were raised in this regard were the following:

Ygnacio Galvan—The evidence shows that he had worked at the plant for about ten or eleven years prior to November 18, 1938 (Tr. pgs. 2652, 2666). Furthermore, the evidence showed that sometime after September 2, 1938 he was solicited by Andrade and signed up for the Union (Tr. p. 1127). He continued to work after November 18, 1938 when work was available.

Peter Galvan—The evidence shows that he worked for the company for a period of six or seven years before November 18, 1938 (Tr. p. 2655). The evidence also shows that he was one of the charter members of Prior's union (Board's Exhibit No. 4). He continued working after November 18, 1938, when work was available.

Lawrence Galvan—The evidence shows that he had been employed by the Boswell Company for a period of five or six years prior to November 18, 1938 (Tr. pgs. 2654, 2655). The evidence also shows that he signed up for membership in Prior's union (Tr. p. 112). He continued working after November 18, 1938, when work was available.

V. C. Galvan—The evidence shows that he had worked for the Boswell Company for a period of about two years prior to November 18, 1938 (Tr. p. 2655).

M. S. Escabedo—The evidence shows that he had been employed by the Boswell Company for three or four years prior to November 18, 1938

(Tr. pp. 2655, 2656). The evidence also shows that he was one of the charter members of Prior's union (Board's Exhibit No. 4). He continued to work after November 18, 1938, when work was available.

H. M. Smith—The evidence shows that he had previously been employed, commencing in September, 1937 (Tr. pp. 2656, 2657, Boswell's Exhibit No. 23 (b).)

Joseph Melton—The evidence shows he had also worked for the company prior to November 18, 1938, and since October 1, 1938 (Tr. pp. 2657, 2658).

Fred Mathews—The evidence shows he had likewise been employed by the company prior to November 18, 1938, and since May 13, 1938 (Tr. p. 2659, Board's Exhibit No. 3).

Waldon Bunker—The evidence shows that he was what is known as a "pick-up cowpuncher or cowboy", that he was also employed from time to time, as his services were needed, as a cowboy at the Wreden Ranch, and that he never worked at the Boswell Company's plant at Corcoran (Tr. pgs. 2659, 2778).

H. A. Champane—The evidence shows that he was a welder who was employed in the blacksmith shop in March, 1939 (Tr. p. 2661), that his work was of a specialized nature and that none of the complaining union employees was capable of performing it (Tr. p. 2666).

Charles A. Crye—The evidence shows that he never worked at the Corcoran plant but worked

for the Malga Company on the Chamberlin Ranch, which ranch is owned by the Boswell Company and is located a number of miles from Corcoran (Tr. p. 2662).

John Watson—The evidence shows he was never employed at the Corcoran plant but worked on the Chamberlin Ranch (Tr. p. 2662).

Harry Rickman—The evidence shows he was never employed at the Corcoran plant subsequent to November 18, 1938, but since about March 11, 1939, he was employed to drive a bulldozer on the levee in Reclamation District No. 749, which is situated in the Tulare Lake area some distance from Corcoran (Tr. p. 2665).

Vernon M. Rood—The evidence shows that he was first employed by the Boswell Company in August of 1935 (Boswell's Exhibit No. 23 (a).)

The portion of said Finding No. 53 wherein it is stated that there was no proof that Ely and Winslow could not have done the type of work performed by these new employees purports to shift the burden of proof upon respondents and is contrary to law. On the contrary, no evidence was introduced showing any specific qualifications of any of the complaining union men to do any specialized type of work.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 69.
Exception No. 70.

Respondents and each of them hereby except to Findings Nos. 54 and 55, and each of them, upon the grounds that the portions of said findings herein-

after designated are contrary to, and unsupported by, the evidence, are based solely upon hearsay and incompetent evidence erroneously introduced over the objections of respondents, and are incomplete and inaccurate statements of the evidence.

Stephen J. Griffin was first employed by the Boswell Company in August, 1932. At that time he hauled hay, helped feed cattle, and did different types of work off and on until 1936 (Tr. pp. 1286 and 1287). In May, 1936, he bought a hay bailer and, contrary to the implication in Finding No. 54, he was not in the employ of the Boswell Company during the time he operated the hay baler. He baled hay on contract and was paid at a fixed rate per bale. He baled hay on contract for the Boswell Company as well as others. When he was baling for the Boswell Company, the work was done on one of the Boswell ranches (Tr. pp. 1287, 1342 and 1343). He baled hay for three seasons and was not in the employ of the Boswell Company during that time (Tr. p. 1287). He ceased baling hay in July, 1938, and testified that about six weeks later he was employed by the Boswell Company (Tr. p. 1289).

He testified that when he started work in August or September, 1938, he did numerous jobs, some of which were cleaning, feeding suction, sewing cotton seed, and baling seed (Tr. p. 1290).

Griffin testified positively, both on direct and cross-examination, that he worked continuously from the time he was employed in August, 1938, until November 17, 1938 (Tr. p. 1291, p. 1327), and he testified

positively that he was not laid off at any time after the first week in August, 1938, until November 17, 1938 (Tr. p. 1328). He was shown Board's Exhibit No. 3 which consisted of the Social Security records kept by the Boswell Company for all employees, and which records showed the periods during which employees worked and the amount of pay they received. Counsel for the Board during the hearing had previously made the statement for the record that the Board had not attempted to contest the accuracy of the records contained in Board's Exhibit No. 3 (Tr. p. 934). Griffin's Social Security record showed that no wage payments were made to him between the week ending August 11, 1938, and the week ending October 13, 1938. After being shown this record he was asked if he was not laid off from August 11, 1938, until on or about October 7, 1938 (Tr. 1328). Despite this incontrovertible evidence, he testified he thought there was a mistake in the books (Tr. p. 1330), and, so far as he could remember, he worked continuously during this period of time, and that during said period of time he was sewing cotton seed cake and cleaning up around the gin, and feeding suction, and hauling cotton seed into the warehouse. He also testified positively that he was paid continuously at the rate of forty cents per hour during the period from August, 1938, on through to November 17, 1938, and that he worked ten or eleven hours each day during that time (Tr. p. 1331).

He also testified positively that he was not even laid off several days at a time during that period

(Tr. p. 1341) and that he did not receive any checks for a week's work as low as \$24.80.

In addition to the record contained in Board's Exhibit No. 3, Gordon Hammond, the plant superintendent employed by the Boswell Company, identified and explained Griffin's time cards for the period above mentioned and explained in detail the nature of the work done by him and demonstrated conclusively that the records contained in Board's Exhibit No. 3 were correct (Tr. pp. 2525 to 2533). Gordon Hammond's testimony and the time cards (Tr. p. 2526; Boswell's Exhibits Nos. 22 (a) to 22 (g), inclusive) showed that Griffin worked only two days during the week ending August 5, 1938, and, contrary to the statement in Finding No. 54, showed that he was paid at the rate of 35c per hour during that week. The records and testimony further conclusively show that Griffin was not again employed by the Boswell Company from that time until the week ending October 13, 1938 (Tr. p. 2527).

Griffin was asked if during his last week of work at the plant, that is, the week ending November 17, 1938, his work did not consist chiefly of hauling planting seed, and he testified that it did not, that his work consisted chiefly of sewing planting seed (Tr. p. 1331). He was also asked if there was some work done by him during that week which consisted merely of cleaning up around the plant, and he testified he didn't know as there was that week. He was also asked if he knew how many hours a day he worked during his last

week of employment, and he testified he was sure it was around 12 hours a day (Tr. p. 1332). The foregoing testimony was directly contrary to his time card for the week ending November 17, 1938 (Boswell's Exhibit No. 22 (G),) which showed, first, that the principal work performed by him during said week was hauling planting seed, and that he did not do any work of sewing planting seed during said week; and, second, that during part of three days during said week he was engaged in clean-up work around the yard; and, third, that there was only one day during said week in which he worked 12 hours, and the rest of the time during said week he worked only from 4 to 11 hours a day, which fact showed conclusively that the work on which he was engaged was running out.

When Griffin was asked by Board's counsel whether he became a member of any labor organization, he could not remember either the name or the number of Prior's local Union, of which he became a member (Tr. p. 1293).

The foregoing instances are illustrative of the complete unreliability and lack of credibility of Griffin's entire testimony.

The following portion of Finding No. 54, to-wit:

"During the afternoon of November 17, 1938, Tom Hammond went to the cotton gin where Griffin was sewing sacks and asked Griffin in the presence of Paul R. Morris and Horace Hastings if he had joined the union. Griffin told Hammond that he had been a member for about two weeks,"

is based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents and is not supported by any competent and credible evidence. Respondents duly objected to the introduction of such testimony upon the ground of hearsay and upon the further ground that it was incompetent, irrelevant, and immaterial, there being no authority established from the Boswell Company to Mr. Tom Hammond to bind it with respect to any of the matters under investigation in this proceeding (Tr. p. 1294). The objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling and the respondents, and each of them, hereby except to such ruling, upon the grounds above stated.

Furthermore, said above quoted portion of said Finding is an incorrect statement of said testimony, which was erroneously introduced (Tr. p. 1295).

It is significant to note that although Griffin claimed he told Tom Hammond in the alleged conversation above mentioned "that he had been a member for about 2 weeks," he testified that he did not join the union until about November 15 or 16, 1938 (Tr. p. 1293).

The following portion of Finding No. 54, to-wit:

"Hammond walked directly to the back of the warehouse and met Gordon T. Hammond where they stood and talked for about 15 or 20 minutes,"

and the whole of Finding No. 55 are unsupported by any competent and credible evidence.

The statement in Finding No. 55 that "Griffin has

not been recalled to work by the respondents since November 17, 1938" is contrary to the undisputed evidence that Griffin has never applied for work from the Boswell Company since November 17, 1938 (Tr. p. 1349, p. 2636).

Gordon Hammond testified that Griffin was laid off because there was no work for him to do, and the records and other undisputed testimony shows that to be the case. Griffin testified as above mentioned that his principal work was sewing planting seed (Tr. p. 1331). The testimony of Gordon Hammond (Tr. p. 2631) and Boswell's Exhibit No. 22(g) show that Griffin, during the last week of his work, was doing odd jobs and hauling planting seed. The record shows that only 1007 tons of planting seed were set aside that year as compared with 1537 tons the previous year (Tr. p. 2555). On November 17, 1938, the undisputed evidence shows that they had finished picking the cotton set aside for planting seed (Tr. p. 2555). Also, on that date, 879.4 tons of planting seed out of the 1007 tons which were set aside, had been sacked and stored in the warehouse. The evidence showed that practically all of the planting seed which was set aside had been sacked and hauled (Tr. p. 2633). The fact that there was a very short cotton season that year is shown by the undisputed records and testimony of all witnesses. Even many of the union employees testified that they realized that to be true. In fact, at about 9 o'clock A.M. on that date, Nov. 17, 1938, Farr, Prior, Martin and Spear called on Gordon Hammond and discussed the fact that the cotton was running out and suggested that the work

be spread among the employees to prevent any more layoffs than necessary. Prior testified that they knew a number of employees had been laid off and it was understood that there were probably going to be more laid off (Tr. p. 465).

Gordon Hammond testified that he notified Griffin about 7 o'clock on the morning of November 17, 1938, that he would be laid off. Gordon Hammond stated that this conversation occurred at the gin "where they were hauling and sacking planting seed" (Tr. p. 2712). It is stated in Finding No. 55, based upon the testimony of Griffin alone, that he was not notified of his layoff until the afternoon of November 17th. Prior testified that there had been a number of men laid off at some time before their meeting at 9 o'clock on the morning of November 17th (Tr. p. 465). Gordon Hammond also testified that during this meeting at 9:00 A.M. he told the union representatives that he had already laid off three men that morning (Tr. p. 2563). He testified that the three men he referred to were Griffin, Johnston and Eller (Tr. p. 2562). Although Prior, Farr, Martin and Spear were all called as witnesses, none of them denied that Gordon Hammond had made such a statement to them during that meeting.

Griffin's testimony is replete with contradictions and indefinite statements on the matters concerning which he should be familiar, as well as untrue testimony regarding the length of his employment as above set forth. Since the above mentioned portions of Findings No. 54 and 55 are based entirely upon

Griffin's uncorroborated testimony, it is submitted that it is not supported by any competent or substantial evidence.

The evidence also shows without dispute that the major portion of the work performed by Griffin during the last six weeks of his employment immediately prior to November 17, 1938, was the sacking and hauling of planting seed and clean-up work in connection therewith (Boswell's Exhibit No. 22 and Tr. p. 1331). The undisputed evidence also shows that immediately prior to November 17, 1938, Johnston, Eller, Morris, and Hastings also worked on the planting seed. The evidence shows that both Griffin and Johnston were laid off November 17, 1938, solely because of the natural termination of the seasonal job of sacking, hauling and storing the planting seed, which job had been practically completed, and had been entirely completed so far as it was possible to complete the same to that date, and that there was no further work for them, as well as some of the others who had been engaged on that job to do, and that neither of said men were laid off because of their union activities. In fact, Gordon Hammond testified that he did not know at the time of laying them off on November 17, 1938, that they belonged to the Union (Tr. 2720). Furthermore, the evidence shows that Morris, who, so far as disclosed by the evidence, was not a union member, or in anywise engaged in union activities and who had been engaged on the planting seed job, was also laid off a few days after November 17, 1938 (Tr. 2722).

The respondents, and each of them, specify all the foregoing as Exception No. 70.

Exception No. 71.

Respondents, and each of them, hereby except to Finding No. 56, page 29 of the Intermediate Report, upon the ground that certain portions of said Finding are contrary to and unsupported by the evidence, and on the ground that said Finding does not fully or accurately state the evidence regarding the matters therein mentioned.

The evidence shows that when Johnston started work in 1937 it was at the start of the 1937-38 ginning season (Tr. p. 231).

The undisputed evidence shows that Johnston was re-employed by the Boswell Company about the time the mill started running in the fall of 1938 (Tr. p. 239), which would be about October 24, 1938 (Tr. pp. 2551, 2552, corrections pp. 2599, 2600). From that time until the time of his lay-off on November 17, 1938 just following the closing of the mill, Johnston was merely performing odd jobs. According to his own testimony, upon his return to work he worked one day in the branding pen, then about seven days as press helper, then about two weeks sewing and sacking planting seed and thereafter as bale hauler (Tr. pp. 225, 226). This testimony was also confirmed by Gordon Hammond (Tr. p. 2632).

He also admitted that although his leg was sufficiently recovered that he could have gone back to work as early as the middle of June 1938, (Tr. p. 238) he did not apply for work at any time after his

leg was injured the latter part of January 1938 until about October 10, 1938, when he did apply for work (Tr. p. 239), and that this application for work was made shortly before the start of the oil mill (Tr. p. 239). This application for work was made to Gordon Hammond. Johnston also admitted upon recross-examination that he received workmen's compensation insurance for the time he was unable to work by reason of his injury. Also that sometime in February 1939 he had an operation on his leg, which was taken care of by the Workmen's Compensation Insurance Company, and that since this operation he had also been receiving and was at the time of the hearing receiving Compensation payments (Tr. p. 254-5).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 71.

Exception No. 72.

Respondents, and each of them, hereby except to Finding No. 57, pages 29 and 30 of the Intermediate Report, upon the ground that certain portions thereof are contrary to and unsupported by any competent and credible evidence and misstate the evidence.

The statement in said Finding purporting to relate the testimony of Johnston that Gordon Hammond told Jonhston he was laid off on account of the weather and the shortage of the cotton crop is an incorrect statement. Johnston's testimony in this regard was that Gordon Hammond told him "on account of the water and the shortage of the cotton crop he would have to lay someone off * * *"

The portion of said Finding relating to said alleged conversation is not supported by the credible evidence as will hereinafter be discussed.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 72.

Exception No. 73.

Respondents, and each of them, hereby except to Finding No. 58, page 30 of the Intermediate Report, upon the ground that said Finding incorrectly states the evidence.

Gordon Hammond testified that on the morning of November 17, 1938, he notified both Johnston and Griffin "that there would be no more work for them after that day for a few days". He did not state "for a few weeks", as stated in said Finding (Tr. p. 2631).

Facts relating to the credibility of Griffin are set forth in Exception No. 70, and respondents hereby incorporate all portions of said Exception relating to Griffin.

Johnston testified at the hearing that he had never talked over the matters to which he testified with any members of the union before getting on the stand and that he had not discussed the case with anyone whomsoever before testifying (Tr. pp. 1705 to 1708).

Frank A. Mouritsen, Attorney for the Board, was later called as a witness and he testified that he had a signed statement by Mr. Johnston, which was taken by someone on the staff, prior to the time Johnston testified, and that he would say before Johnston testified he had discussed the case with him because that was his invariable practice.

Johnston also testified, in answer to a direct question, that he was not employed. In this regard, Mr. Mouritsen stated in his testimony that he had called Mr. Johnston out of order so that he could take employment elsewhere and that Johnston left after he testified and he thought he was employed in Hanford (Tr. p. 2352). Mr. Mouritsen later explained his answer and stated that he let Johnston go for the purpose of taking up employment, but he did not know whether Johnston was employed when he was testifying.

Respondents, and each of them, hereby specify, all the foregoing as Exception No. 73.

Exception No. 74.

Respondents, and each of them, hereby except to the conclusion of the Examiner in Finding No. 59 and to the entire Finding, with the exception of the first sentence thereof, upon the ground that said conclusion and said portion of said Finding are unsupported by, and contrary to, the evidence.

The undisputed evidence shows that neither Johnston nor Griffin ever at any time applied for work after they were laid off November 17, 1938. Each of them admitted this fact (Tr. p. 243, 1349 and 2636).

It is stated in said Finding, among other things, that it has been the policy of the Company to notify men when they are to return to work. Such statement is not supported by any evidence *any*, on the contrary, the evidence clearly shows that the Company did not have, and has not at any time followed, such policy, but that it has been the policy

and practice for men desiring work to apply therefor to Gordon Hammond, at the plant, except on a very few occasions when the Company would look up a man and offer him employment because it had no experienced applicant for the job which was available.

Johnston, himself, testified that after his injury and layoff in February 1938, he applied for work again about October 10, 1938, or around the first of October (Tr. p. 239), and that such application was made to Gordon Hammond, plant superintendent (Tr. p. 240).

The evidence discloses no promise or agreement whatever on the part of Gordon Hammond to notify either Griffin or Johnston to return to work at the Boswell plant after they were laid off November 17.

The evidence further shows that on November 19 the union held a meeting and initiated a boycott against the Boswell Company (Tr. pp. 962, 963, 1349, 135, 1177), that Griffin attended the meeting when the boycott was declared (Tr. p. 1349), and that both Griffin and Johnston took an active part in said boycott.

The undisputed evidence shows that not only did neither of these men ever apply for work after November 17, 1938, but that on or about November 26, 1938, Prior, Spear and Martin called upon Gordon Hammond for the purpose of discussing the re-employment of these two men, as well as other union men. Mr. Hammond informed them that the Com-

pany would take any or all of the men back when it had work for them, beginning the next morning or any time they wanted to come back. The following day, Prior, Martin, and Hammond had a further discussion regarding the matter. Prior requested that all of the men be taken back in a body. Hammond told him they didn't have work for them and couldn't take them all back in a body (Tr. p. 2570-1). Prior then suggested that they all be taken back and put to work tearing down and restacking stacks of cake for two or three days. To which Hammond replied that the Company could not do that. Prior then stated that he would compel the Company to take them back and would tie up the cotton, oil, and cake where it couldn't move (Tr. p. 2572).

The evidence also shows that Prior, at a meeting held by him with Mr. Louis T. Robinson, on or about November 28, 1938, during which the matter of employing the union men was discussed, when informed by Mr. Robinson that some of the men would be put back to work from time to time as work was available, took the position that there was no use of discussing the matter further, unless all of the men were immediately put back to work (Tr. pp. 140, 2417).

The evidence affirmatively shows that neither Griffin nor Johnston were laid off on November 17, 1938, because of their union activities and membership, and that such lay-off was solely and entirely due to the termination, in its natural course, of the

jobs on which they had been employed, and to the lack of any further work for them to do (Tr. p. 1296-7). The evidence also shows that at the time Griffin and Johnston were laid off on November 17, 1938, Gordon Hammond did not even know they were members of the union (Tr. p. 2561), and so informed Prior at the meeting of November 17th with Prior, Martin, Farr, and Spear.

The respondents and each of them, specify the foregoing as Exception No. 74.

Exception No. 75.

Respondents, and each of them, hereby except to Finding No. 61, pages 30 and 31 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are based entirely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and that said Finding is contrary to the evidence and incomplete in the respects hereinafter specified.

The evidence shows that Spear was among those mentioned in said Finding who met with Gordon Hammond on the morning of November 17, 1938, (Tr. p. 954). The evidence also shows that Prior arrived at the Boswell plant after the plant was in operation and that at his request Gordon Hammond called Farr, Spear and Martin from their jobs to hold a conference (Tr. p. 343, p. 344). Prior testified that one of the primary purposes of the conference was to suggest a reduction in the hours per shift in order to avoid lay-offs. Prior said that

he told Gordon Hammond that they knew a number of men had been laid off and that others would be laid off because of the smaller acreage and scarcity of cotton that year (Tr. p. 465). Prior, Spear and Farr all suggested that the working day be reduced to eight hours so that everyone would get a little work, rather than some of them being laid off (Tr. pgs. 451, 346, 955 and 956). Prior called Gordon Hammond's attention to the fact that some plants operated on a three-day week in order to avoid lay-offs (Tr. p. 451). Prior also testified that they did not discuss the reinstatement of men who had been laid off (Tr. p. 463). They discussed the authority of Tom Hammond and Joe Hammond and Prior stated that he wanted "a clarification by someone in charge as to their exact status" (Tr. p. 467). Prior testified that Gordon Hammond informed them that neither Tom Hammond nor Joe Hammond had authority to hire or fire employees (Tr. p. 467). Prior asked Gordon Hammond if the men would be laid off if they came to union meetings and Gordon Hammond replied that they would not and that Prior could tell them if they wanted to go it was all right for them to go, and if they would rather ask him Gordon Hammond, he would tell them to do so, or they could ask Louis Robinson (Tr. p. 2561).

The respondents, at the time of the hearing, objected to the introduction of the testimony regarding the alleged conversation between Tom Hammond and Farr on November 17, 1938, upon the grounds

that it was hearsay, that such conversation was not binding on any of the respondents, and, in connection with the respondent Boswell Company, on the further ground that no authority had been shown from the Company to Mr. Hammond to speak for it with regard to the matters under investigation in the hearing. The objection was erroneously overruled by the Trial Examiner, and an exception was taken hereto (Tr. p. 271). After Farr was permitted to testify regarding his alleged conversation with Tom Hammond, over the objection of respondents, respondents moved to strike such testimony upon the same grounds urged against its introduction. The motion to strike was erroneously denied and the respondents excepted thereto (Tr. p. 273), and the respondents, and each of them, hereby except to the foregoing ruling on their objection and to the denial of the foregoing motion to strike, upon the grounds above stated which were urged at the time of the hearing.

The respondents, and each of them, specify all of the foregoing as Exception No. 75.

Exception No. 76.

Respondents, and each of them, hereby except to Finding No. 62, page 31 of the Intermediate Report, upon the ground that certain portions of said Finding, hereinafter designated, are based solely upon hearsay and incompetent evidence erroneously introduced over the objection of respondents and that said Finding is an inaccurate and incomplete statement of the evidence in the respects hereinafter mentioned.

The evidence shows that on November 17 the gins started at 7 A. M. (Tr. p. 959), but on the morning of the 18th Spear's gin was scheduled to start at 10 A.M. (Tr. pp. 560, 858). Spear testified that he assumed Gordon Hammond was acting upon the suggestion of the union committee to cut the hours and divide the work (Tr. p. 960).

The portions of said Finding relating to alleged conversations between Bill Robinson and Farr were based solely upon hearsay and incompetent testimony, which was erroneously introduced over the objection of respondents. The respondents, at the time of the hearing, objected to the introduction of the testimony regarding the alleged conversation between Bill Robinson and Farr referred to in said Finding, upon the ground that it was hearsay, was not binding upon any of the respondents, and, with respect to respondent Boswell Company, that no authority had been shown from the Company to Mr. Bill Robinson to speak for it with relation to any of the matters subject to this investigation. The objection was erroneously overruled and an exception was duly taken thereto (Tr. p. 276). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The portion of said Finding wherein the Trial Examiner concludes that Bill Robinson is a supervisory employee is contrary to and unsupported by the competent and credible evidence. Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception

No. 54. No evidence was introduced which showed, or tended to show, that respondents conferred any authority upon Bill Robinson to speak or act for or on behalf of any of the respondents in relation to any of the matters mentioned in said Finding. The evidence also affirmatively shows, without dispute, that Gordon Hammond, plant superintendent, was absent from the plant on November 18, 1938 between 8:30 A. M. and about 7 P. M. of said day; that he did not know before leaving the plant that morning that the employees of the company intended to meet and did not give any one permission, or authorize anyone, to shut down any of the gins or any of the machinery about the plant, or to leave their work during his absence, and that he first learned about the occurrences of November 18, 1938 upon his return to the plant about 7 o'clock that evening (Tr. p. 2567).

Respondents, and each of them, hereby specify the foregoing as Exception No. 76.

Exception No. 77.

Respondents, and each of them, hereby except to Findings Nos. 63 and 67, page 31 to 34 of the Intermediate Report, upon the ground that certain portions of said Findings hereinafter specified are based solely upon incompetent hearsay testimony erroneously introduced over the objection of respondents and are incomplete, contrary to and unsupported by the evidence.

In regard to the persons present at the gathering referred to in said Finding, Spear testified

that he did not see anyone in the group who was not an employee (Tr. p. 862).

The statement in Finding No. 63 that the three men therein mentioned "by pulling and pushing forced Spear" to the office is contrary to the evidence. Farr testified that no force was used (Tr. p. 332). Spear testified that no one struck him (Tr. p. 986), that he didn't think anyone pushed him (Tr. p. 869) and that they led him to the office (Tr. p. 986).

When they got in the office Martin testified that Rube Lloyd, Nichols and Bill Robinson were there, yet he also testified as follows:

"We just waited there for a long time, never did nobody with authority show up, and finally Mr. Robinson put his head out of the door
* * *".

Contrary to the statement in Finding No. 63, there is no evidence that Farr identified Yankee Roberson as among those who were present in the office.

As stated in Finding No. 63, Gordon Hammond was not at the plant that morning. The undisputed evidence shows that he had no knowledge of the events which occurred that day until he returned to the plant in the evening, and that he did not authorize the closing of the gins or any of the men to leave their jobs (Tr. p. 2567). The evidence is also uncontradicted that Louis Robinson did not know of the incident until the men came to his office. He testified that he was in his office with Ar-

mour, his assistant, and Batil, discussing Batil's business, when a swarm of men came into the office (Tr. p. 2148). Some one of the employees said they were not going to run the plant both union and non-union and that there was a big majority of non-union men and they wanted the union men discharged (Tr. p. 2155).

The portion of Finding No. 63 relating to the statement supposed to have been made by Louis T. Robinson to-wit: "I will be right out in a short while . . ." is contrary to the credible evidence. That portion of said Finding is taken from Farr's testimony but it is contrary to the testimony of every other witness.

Louis T. Robinson testified as follows:

"I told the men that they were too excited, and I wanted them to go back to work, both union and non-union, and after they cooled down I would come around and talk to them and see if we couldn't straighten the matter out". (Tr. pgs. 2148, 2156, 2472).

Spear testified that Louis Robinson

"told the men to go on back to work, that he would come down and straighten it out, straighten out the trouble" (Tr. p. 870).

Andrade testified that

"Mr. Robinson came to the door and he said something about going back to work, that he would be out and straighten the matter out" (Tr. p. 1112).

Martin, on his direct examination, testified that

“Mr. Robinson put his head out of the door and told us to go back to work, he would be around to straighten it out” (Tr. p. 537).

However, during the cross-examination of Martin a recess was taken. Although no questions were asked on cross-examination relating to the statement of Mr. Robinson he was questioned again by counsel for the Board regarding the statement, and he then testified that Mr. Robinson said

“Go on back and go to work boys, I will be around in a few minutes and straighten this out” (Tr. p. 572).

In addition to the matters stated in said Findings, the evidence showed that the morning of November 18, 1938, was the first time that any of the union men had worn their union buttons on the job (Tr. p. 857, p. 1002).

The portion of Finding No. 63 relating to an alleged conversation between Farr and Jack Ely is based solely upon hearsay, which was erroneously introduced over the objection of respondents.

The respondents, at the time of the hearing, objected to the introduction of testimony regarding said alleged conversation upon the grounds that the conversation was hearsay as to all respondents, and specifically as to the respondent Boswell Company and that there had been no authority shown from the Company to Mr. Ely to speak for it with respect to any of the matters under investigation in this proceeding. This objection, as well as a sub-

sequent objection to the same testimony was erroneously overruled by the Trial Examiner, and an exception was duly taken to each of said rulings (Tr. pp. 278-279). The respondents, and each of them, hereby except to said rulings and each thereof, upon the grounds above stated, which were urged in support of the objections.

The portion of said Finding No. 63 relating to certain statements alleged to have been made by Spear is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents.

The respondents, at the time of the hearing, objected to the introduction of testimony by Farr regarding said alleged statements made by Spear, on the grounds that such statements were not in any wise binding upon the respondents and were pure hearsay and self serving. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 280-1). Respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The portion of said Finding No. 63 relating to statements alleged to have been made by some unidentified person is based solely upon hearsay and incompetent testimony erroneously introduced into the record.

Respondents, at the time of the hearing, moved to strike Farr's testimony regarding said alleged statement made by some unidentified person in the

crowd, "Let's throw them out. The Company is behind us", upon the grounds that such statement was hearsay, was not binding upon the respondents, and there was no authority shown from the Company to any such person to make any such statement. This motion was erroneously denied by the Trial Examiner and an exception was duly taken to the denial of said motion (Tr. pp. 281-282). Respondents, and each of them, hereby except to the denial of said motion upon all of the grounds above stated which were urged in support of such motion.

The portion of Finding No. 67 relating to an alleged conversation between Spear and Todd is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. The respondents, at the time of the hearing, objected to the introduction of the testimony by Spear regarding said alleged conversation upon the grounds that such conversation was, as to all respondents, hearsay and not binding on any of them, and that there was no authority shown for Mr. Todd to speak for any of the respondents. This objection was erroneously overruled and an exception thereto was duly taken (Tr. pp. 859-860). Respondents, and each of them, hereby except to the said ruling upon the grounds above stated which were urged in support of the objection.

No evidence was introduced showing, or tending to show, any authority conferred by respondents, or any of them, upon any of the persons mentioned in said Findings to act for or on behalf of any of the

respondents in regard to any of the matters therein stated.

Respondents, and each of them, hereby specify all the foregoing as Exemption No. 77.

Exemption No. 78.

Respondents, and each of them, hereby except to Finding No. 64, pages 32 and 33 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and are incomplete and contrary to and unsupported by the evidence.

No authority was established from respondents, or any of them, to Kelly Hammond, Burdine, Mitchell, Bill Robinson, Tom Hammond, or any other person therein mentioned or referred to, to speak or act for or on behalf of respondents, or any of them, with respect to any of the matters therein mentioned.

Contrary to the statement in said Finding, the evidence shows that Joe Hammond was not a foreman.

In addition to the matters therein stated, the testimony showed that Tom Hammond, Kelly Hammond, Joe Hammond, Bill Robinson, Burdine, Mitchell, and many others were around the gins after all of the employees went back to work on the morning of *October 18, 1938*. In spite of this fact Spear testified as follows: "I sat down on the stairs. In fact I was stalling for time. I was

waiting for somebody to come around.” (Tr. p. 804). He testified further that he was waiting specifically for Louis Robinson to come around (Tr. p. 982).

Martin testified that he told Tom Hammond at that time, “If Mr. Hammond and Mr. Louie Robinson comes down here and says ‘Go home,’ all right, but until they do we won’t” (Tr. p. 540). He testified that when he mentioned Mr. Hammond he was referring to Gordon Hammond (Tr. p. 563).

Said Finding is misleading by reason of the fact that it fails to identify which “Robinson” is referred to in said Finding. There is no evidence in the record that Louis Robinson did any of the acts or made any of the statements mentioned in said Finding.

The portion of said Finding relating to an alleged conversation between Farr and Robinson, and also between Farr and Tom Hammond and other persons, is based solely upon hearsay erroneously introduced over the objection of respondents.

The respondents, at the time of the hearing, objected to any testimony by Farr regarding what was said by him and by certain other parties who were alleged to have been present after the men had left the office and returned to their jobs on the morning of November 18, 1938, upon the grounds that same was hearsay and not binding on any of the respondents, and particularly as far as respondent Boswell Company was concerned, that no authority whatsoever had been shown by the Company to any of

the individuals mentioned to make any statement at all for it, or on its behalf, with respect to the matters under investigation in this proceeding (Tr. p. 288). This objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling (Tr. p. 289), and the respondents, and each of them, hereby except to such ruling upon all the grounds above stated.

The respondents, at the time of the hearing, moved to strike the testimony of Farr with respect to the alleged conversation between Tom Hammond and Farr, upon the grounds stated in support of the objection previously urged. This motion was also erroneously denied by the Trial Examiner, and an exception was taken to such denial (Tr. p. 289), and the respondents, and each of them, hereby except to the denial of said motion upon all the grounds above stated.

The respondents, at the time of the hearing, also objected to the introduction of the testimony by Farr regarding the alleged conversation between him and Bill Robinson, upon all the grounds above stated (Tr. p. 289). This objection was erroneously overruled by the Trial Examiner, and an exception was taken to such ruling (Tr. p. 290), and the respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The portion of said Finding relating to certain statements alleged to have been made by Bill Robinson incorrectly sets forth the testimony in that

regard, which was erroneously admitted as above stated. Farr testified, over the objection of respondents as aforesaid, that after Bill Robinson had made the statement referred to in said Finding, Wingo asked him the following:

“as a foreman will you tell us to go home”, and Bill Robinson said,

“No, not as a foreman, but that is my idea that you men had better go home”.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 78.

Exception No. 79.

Respondents, and each of them, hereby except to Finding No. 65, page 33 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence and upon the further ground that there was no authority established from respondents, or any of them, to Bill Robinson to bind respondents, or any of them with respect to any of the matters under investigation in this proceeding.

The evidence affirmatively establishes that Bill Robinson, in the discharge of his duties, had no authority whatsoever to hire or fire any employee, or to fix the terms or conditions of employment of any employee of respondent Boswell Company (Tr. p. 2391, p. 2398), and that the orders, if any, which were given by Bill Robinson to Farr, as mentioned in said Finding, were only such orders as were necessarily and properly given for the mechanical operation of the gin.

Respondents, and each of them, hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 79.

Exception No. 80.

Respondents, and each of them, hereby except to Finding No. 66, page 33 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter specified are contrary to and supported by any evidence and misstate the evidence, and upon the further ground that there was no authority established from respondents, or any of them, to Rube Lloyd, Yankee Roberson and Oscar W. Busby, or any, or either of them, to act or speak for or on behalf of respondents, or any of them, in relation to any of the matters involved in this proceeding.

The following portion of said Finding, to-wit:

“that Rube Lloyd, Yankee Roberson and Oscar W. Busby were among the group who went into Hammond’s office at the time Spear was dragged in there by the individuals above named”

is contrary to the evidence. Martin’s testimony in the above regard is that in addition to the three men who had brought Spear over to the office, the only men he could remember were Rube Lloyd, Mr. Nichols and Bill Robinson. He did not mention Yankee Roberson or Oscar W. Busby (Tr. p. 535).

There was no evidence whatever that Spear was dragged into the office, but, on the contrary, the undisputed evidence showed that he walked from the yard over to the house and that no force had been used upon him.

The portion of said Finding wherein the Trial Examiner finds that Busby is a supervisory employee of the respondent is contrary to and unsupported by the evidence. There is no substantial or competent evidence to support the above mentioned conclusion of the Trial Examiner which is based solely upon hearsay evidence, and, on the contrary, the evidence affirmatively establishes that Busby had no authority to hire or fire, or to fix or determine hours, wages or conditions of employment and that he was not a supervisory employee.

Respondents hereby restate and incorporate herein, with the same effect as if stated herein in full, Exception No. 54.

Martin, himself, testified that, after Spear and the other men got to the office, they just waited there for a long time; that nobody showed up with authority, and finally Mr. Robinson (referring to Louis T. Robinson, General Manager) put his head out of his office door and told them to go back to work, and he would be around to straighten it out (Tr. p. 536-7).

Respondents, and each of them, specify all of the foregoing as Exception No. 80.

Exception No. 81.

Respondents, and each of them, hereby except to Findings Nos. 68 and 69, page 34 of the Intermediate Report, upon the ground that certain portions whereof, hereinafter referred to are inaccurate, incomplete, contrary to and unsupported by the evidence.

The evidence affirmatively established that Louis Robinson instructed the men to return to work when they came to the office and the men did return to the gins. However, they remained at the gins only 10 or 15 minutes, and not exceeding 30 minutes, and then went to their homes without notifying Louis Robinson prior to their departure that they intended to leave or that the non-union employees had refused to work with them (Tr. p. 371). As a result, Louis Robinson was not afforded any opportunity to straighten the matter out before their departure.

The evidence also affirmatively establishes that the union men named in said Finding left the plant and went home of their own free will and accord without any instruction from Louis Robinson to that effect, and directly contrary to the previous instructions he had given them. Louis Robinson was the only person who was at the plant that day who was authorized to represent or speak for the company with respect to employment matters and the operations of the plant.

It is also clear that the meeting at 10 o'clock that morning before the men went to Louis Robinson's

office arose because of disagreements between the union employees and the non-union employees of the Boswell Company, and it is also clear that the Boswell Company was not in any way involved in those disputes. It is likewise clear that the same disputes influenced the union employees in their decision to leave the plant without obtaining the permission of Louis Robinson and directly contrary to his instructions. The record shows that the underlying, and only reason for the trouble which occurred at the plant that day during the absence of Gordon Hammond was the fact that a great majority of the employees were not interested in joining Prior's organization and were not in favor of the program proposed by the union men of prorating the work and reducing the hours worked to eight hours a day with a resultant decrease in earnings.

It is also affirmatively established by the undisputed evidence that neither Louis Robinson nor Gordon Hammond had any advance knowledge or information either that the employees intended to meet on the morning of November 18th, or that any disturbance was about to or might occur. (Tr. pp. 2145, 2567).

The evidence also shows that Louis Robinson and Gordon Hammond, who are the only men in authority at the plant, did not in any way sanction or approve the unauthorized action taken by the non-union employees (Tr. pp. 2484, 2701).

The portion of Finding No. 69 wherein it is stated that Louis Robinson did not keep his promise with

the employees is misleading and contrary to the evidence. Louis Robinson testified that he told the men to go back and start to work and cool down, but before he thought it was the proper time to go out to straighten out the trouble he heard that the union men had left the plant (Tr. p. 2472).

In addition to the matters stated in said Finding, the undisputed evidence shows that Farr's telephone call to Louis Robinson was between 11 and 11:30 A. M. (Tr. p. 2149) and that he told Louis Robinson what happened and told him that the union men had decided it was best to go home. (Tr. pp. 2150, 297). There was no evidence that Farr said the union men were "forced off the job" as stated in Finding No. 68.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 81.

Exception No. 82.

Respondents, and each of them, hereby except to Finding No. 70, pages 34 and 35 of the Intermediate Report, upon the ground that certain portions of said Findings hereinafter specified are contrary to and unsupported by the evidence and are inaccurate, incomplete and are based solely upon hearsay and incompetent evidence introduced over the objection of respondents.

Prior testified that when he telephoned Louis Robinson on the evening of November 18 regarding the previous occurrences at the plant that day, Louis Robinson stated that he knew very little about the incident, that the employees were hold-

ing a meeting that night, and he was going to wait until he had a report from them before he did or said anything. Prior testified that he told Mr. Robinson that he, Prior, felt the situation, if not already serious, would probably become serious and it was the responsibility of all parties to try to come to an understanding on the issues (Tr. p. 132).

The portion of said Finding relating to an alleged conversation between Farr, Martin and Prior is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. Respondents duly interposed objections to the introduction of said testimony, upon the ground that it was hearsay and not substantial evidence required to support Findings in this proceeding. The trial examiner erroneously overruled said objections and permitted the introduction of such testimony, to which respondents, and each of them, duly excepted and do hereby except (Tr. pp. 129 and 130).

Respondents, and each of them, hereby specify all of the foregoing as Exception No. 82.

Exception No. 83.

Respondents, and each of them, hereby except to Finding No. 71, pages 35 and 36 of the Intermediate Report, upon the grounds that said Finding is an incomplete and inaccurate statement of the evidence in the respects hereinafter specified.

In addition to the statements contained in said Finding, Prior testified that at the conference of November 19 he told Mr. Robinson, among other

things, it would possibly be better for the company, the employees and everyone concerned to place a number of the employees at work moving stacks from one pile to another and then back where they came from rather than let a situation of that kind become large and cause a lot of misunderstandings and hard feelings and develop into serious proportions (Tr. p. 424). Prior testified that when he stated the situation might become more serious he meant that if these men were not placed back on the payroll and not protected it might become necessary to file charges with the National Labor Relations Board and appeal to organizations affiliated within the labor movement to help prosecute a boycott against the Boswell Company (Tr. p. 425, 426).

Prior also testified that Robinson stated at that meeting that there was a tense feeling on the part of the employees still working, and that he felt it was a situation that should be handled with utmost care, and that he didn't want to take any action without giving it very careful consideration and bring these employees back and possibly cause a further flare up in the plant (Tr. p. 442).

Contrary to the statements in said Finding, Prior testified that when he asked Louis Robinson how long it would be before he could give him an answer Louis Robinson said he would do the best he could (Tr. pp. 134, 135).

Spear testified that Louis Robinson didn't promise an answer at any definite time (Tr. p. 931), and

there is no evidence that Louis Robinson promised to call or give an answer before 12 o'clock. In addition to the matters therein stated, Louis Robinson testified that Prior asked for the earliest possible answer, and Robinson told him he couldn't hurry but would let him know as soon as he could (Tr. p. 2411). He testified that he didn't remember any specific time limit set by Prior (Tr. pp. 2411, 2412). Louis Robinson also testified, in addition to the matters stated in said Finding, that when he suggested that the union men talk with the rest of the employees they told him they didn't care to do that (Tr. p. 2410).

The fact that Louis Robinson told Prior, Martin and Spear that the men would be carried on the payroll until the matter was determined is also confirmed by the testimony of Gordon Hammond to the same effect (Tr. p. 2756, p. 2771). Although Prior testified that at the meeting of November 19 Louis Robinson did not say anything about continuing the men on the payroll (Tr. p. 414), the undisputed and uncontradicted evidence shows that all of the union men who left the plant following the incident of November 18 were subsequently carried on the payroll and were paid the same as though they had continued working on the jobs on which they were engaged on November 18 up to the time that such jobs terminated in their usual and ordinary course at the end of the ginning season (Board's Exhibit No. 3). The evidence shows that Joe Briley, one of the union men in question,

returned to work a few days after November 18th and has continued to work for the company when work was available.

The portion of said Finding wherein it is stated that the union voted to place a boycott against the company on November 18, 1938 is contrary to the evidence. The evidence shows that the boycott was voted on November 19, 1938 (Tr. p. 135, p. 963).

Respondents and each of them, hereby specify the foregoing an Exception No. 83.

Exception No. 85.

Respondents, and each of them, hereby except to Finding No. 72, page 36 of the Intermediate Report, upon the ground that it is unsupported by and contrary to the evidence, and is an incompetent and inaccurate statement of the testimony relating to the matters referred to in said Finding.

The statements contained in said Finding are merely the statements made by Prior on Direct Examination. Upon Cross Examination, Prior at first testified (Tr. 494) that during the course of his conversation with Mr. Boswell in Los Angeles on November 25, Mr. Boswell stated that the notice which had been prepared by, and posted in, the plant at Corcoran, at the request of Mr. Larson, of the National Labor Relations Board, a day or so previously (Boswell's Exhibit No. 13), stated the policy of the Company. The evidence shows that the notice referred to reads as follows:

“Notice to Employees.

This company will not through its proper representatives or otherwise, restrain, coerce, intimidate or interfere with our employees right to self organization as guaranteed by the National Labor Relations Act.

Furthermore this company will not discriminate with regard to hire or tenure of employment because of affiliations with the American Federation of Labor or any other bona fide labor organization.

This notice will be posted for a period of fifteen days.”

However, later in his cross examination, Prior testified that Mr. Boswell could have made this statement, that he was not positive whether he did or not (tr. 509).

Prior also admitted on cross examination that the charge filed by him against the Boswell Company with the National Labor Relations Board on November 21, 1938, was also read over by, and discussed with, Mr. Boswell during the above mentioned conference (tr. 506-7).

It is stated in the above mentioned Finding that the conversation between J. G. Boswell and Prior was not denied by the respondent. However, the Board itself introduced in evidence a letter dated November 25, 1938, which was written by Fred G. Sherrill, who was present at the conference between Prior and Mr. Boswell, to J. G. Boswell Company at Corcoran (Board's Exhibit No. 26). The letter

was written the same day of the conference while the entire matter was fresh in mind, and fully and accurately sets forth the discussion which was had at said conference.

Said letter reads as follows:

(Copy)

“J. G. Boswell Company
Los Angeles, California
November 25, 1938.

J. G. Boswell Company
Coreoran
California

Attention of Mr. L. T. Robinson
Mr. G. L. Hammond

Gentlemen:

LABOR MATTERS

Mr. Prior, Secretary and Treasurer of the California State Council of Soap and Edible Oil Workers, called on Colonel Boswell this afternoon.

Colonel Boswell told Prior that the notice to employees now posted on the bulletin board at Coreoran, covered his position and that the of the company. He also told Prior that those employees who had been put off the property, as outlined in your letter of November 18, would (provided there was work for them) be paid during the period of their absence in accordance with the policy of the company under the National Labor Relations Act, as outlined in the notice.

Colonel Boswell also told Prior that the responsible individuals in the management of the Corcoran Plant were Mr. L. T. Robinson and Mr. Gordon L. Hammond, and that while in the conduct of the business and the running of the plant certain authority might be delegated as between these two individuals and others on the company's payroll, that he, Colonel Boswell was not acquainted with the detail in this respect.

Prior stated that he had a better understanding of the company's business following his talk with Colonel Boswell, at which point he was told that the published notice constituted all there was to the company's position, and anything which Prior may have inferred from the conversation which went beyond this notice was not in keeping with the position of the company, that we felt the notice was clearly in keeping with the National Labor Relations Act, and it was the intention of the company to conduct his affairs strictly in accordance with the law.

Yours very truly,
(Sgd.) FRED G. SHERRILL,
Treasurer''

Respondents, and each of them, hereby specify all the foregoing as Exception No. 85.

Exception No. 86.

Respondents, and each of them, hereby except to Findings Nos. 73 and 74, page 37 of the Inter-

mediate Report, upon the ground that certain portions hereinafter specified are contrary to and unsupported by the evidence, incomplete and do not fully state the evidence.

Contrary to the statements in said Findings, Prior testified that the conference with Gordon Hammond therein referred to took place on November 27, 1938 (Tr. p. 137). Furthermore, Prior testified, and Board's Exhibit No. 26, establishes that on the afternoon of November 25, 1938 Prior was in Los Angeles where he conferred with Mr. J. G. Boswell (Tr. p. 136).

Prior testified that when he met Gordon Hammond on November 27 he requested a conference with Louis Robinson on the following day (Tr. p. 138).

It is stated in said Finding that the meeting between Prior, Martin and Louis Robinson was held on November 26, whereas Prior testified that it occurred on November 28 (Tr. pgs. 138, 139).

Prior's testimony on this matter was as follows: He told Mr. Robinson that he and Martin wanted to discuss the matter of these men being replaced on the payroll, that they felt they had been discriminated against and "if someone in authority" stated that there was to be no arguments on the job that as far as the other employees were concerned there would be no opposition. Mr. Robinson wanted to know who the men were that Prior referred to that should be placed back on the payroll and Prior started to name the men. Prior

named Spear, and according to Prior, Robinson said that as there was work from time to time that they could use Spear on, that there had been times since November 18 that he would have worked a few days. Prior then named Martin and Prior stated that Mr. Robinson laid his pencil on the desk and said

“Well, Mr. Martin’s machine is just shut down and we can not use Mr. Martin. We might at some time in the future, but we don’t have any idea when.”

Prior then testified that he stated,

“I told Mr. Robinson if that was the attitude in regard to Mr. Martin, that we could not have some misunderstanding as to him, as well as all the rest of them, there was no need of naming any further, and the conference ended” (Tr. p. 140).

Upon cross-examination Prior, when asked concerning this matter, testified as follows: Mr. Robinson asked him just who he had reference to in regard to the re-employment of the union members. Prior said he would name them and he named Spear, and Mr. Robinson said,

“Well, there has been some work we could have used Mr. Spear on since he has been off, and we can use him from time to time as there is work for him”,

and Mr. Robinson wrote Spear’s name on a pad (Tr.

p. 495). Prior then called the name of Martin and Mr. Robinson laid his pencil down and said,

“Now, there is no work. The operation that Mr. Martin was on has definitely shut down, and there is no work for Mr. Martin” (Tr. p. 495),

that they might at some time later use him but that it was indefinite (Tr. p. 496). Prior then stated,

“Well, Mr. Robinson, unless all of these employees are going to be given consideration—they have all been given the same treatment. They are all evicted—and unless all of these employees are going to be given the same consideration, there is no need of discussing the matter further. We are wasting your time, and we are wasting ours.”

This ended the conference according to Prior's testimony (Tr. p. 496).

Prior also testified regarding the above conference as follows:

“Q. Well, the fact is, isn't it, Mr. Prior, that when you were told by Mr. Robinson that Martin's particular job had become exhausted or that that operation had given out, you then told Mr. Robinson that if Martin wasn't taken back, then nobody would come back to work?

A. It is possible that I made that statement.

Q. Isn't that the substance of what you did say?

A. I wouldn't say that was the substance. It is possible I made that statement.” (Tr. p. 501).

Louis Robinson testified as follows regarding the above discussion:

“The first man he named was Lonnie Spear. I wrote his name down and told him that we might find some work for Lonnie, that his gin would probably run a few more days.

I don’t know if Martin was the next man he named, but if he named anybody between Spear and Martin, I don’t remember it.

Then he named R. K. Martin. I told him that Mr. Martin’s gin had closed down and we didn’t have any work for him at that time.

He said, ‘Well, if you don’t have any work for Martin, there is no use to talk any further.’

Q. What happened, if anything?

A. He walked out.” (Tr. p. 2417)

The following portion of Finding 74, to-wit:

“Gordon L. Hammond in giving his version of the meeting of November 19 and the meeting of November 26, which he claims was on the 28th, stated that he told Prior that the respondent would take back all of the union men”

is not supported by and is contrary to the evidence. The only version given by Gordon Hammond with respect to the meeting of November 19th was his testimony that

“Mr. Robinson told them that they would be carried on the payroll on the morning of the 19th until this matter was settled, or something to that effect, I don’t remember just what.” (Tr. p. 2756).

He also testified as follows:

“Well, in a conversation with Mr. Prior and Mr. Farr, Mr. Spear, and Mr. Martin, on the morning of November 19, Mr. Spear was in the office talking to Mr. Robinson about those men going back to work. He told Mr. Prior that the men were to be carried on the payroll until the matter was settled . . . That is all that I remember. There was quite a long conversation about other things. I don't remember.” (Tr. pp. 2770, 2771).

The evidence is clear that Gordon Hammond was not present at the conference between Louis Robinson, Martin and Prior which took place on or about November 28th. (Tr. p. 2742). Consequently he gave no testimony relating to what occurred at that meeting and the statement to the contrary in Finding No. 74 is contrary to the evidence.

With respect to Gordon Hammond's meeting with Prior during the latter part of November, 1938, Gordon Hammond testified that it took place about “the 28th or somewhere along in there”. He did not know the date. (Tr. p. 2752). He testified, however, that two days before the conference between Prior, Martin and Louis Robinson that he had a conversation with Prior, Spear and Martin in the afternoon of that day. He stated that Prior wanted to know something about putting the men back to work who had been off since the difficulty of November 18th. Also Prior wanted to know if the notice Mr. Larson recommended had been put up and Hammond told him

that it had. (Tr. pp. 2569, 2570). Hammond testified that when Prior spoke about taking some of the men back to work Hammond stated:

“I told him we would take any of them, or all of them back when we had work for all of them to work, beginning next morning or any time they wanted to come back.”

Prior also asked to see Louis Robinson but Robinson was not there that afternoon. (Tr. p. 2570).

The following morning, (which was the day before the conference between Prior, Martin and Robinson), Gordon Hammond was again called upon by Prior and Martin and again discussed the matter of putting some of the union men back to work. He testified as follows:

“... he (Prior), asked me that morning if we would take them all back in a body. I told him we didn’t have work for them, we couldn’t take them all in a body.” (Tr. p. 2571).

Gordon Hammond testified further that Prior on that occasion asked him if the company couldn’t take them and put them in the warehouse “tearing down stacks of cake and restacking them for two or three days”. Hammond replied that he couldn’t do that. Prior then stated that if the company wouldn’t take them back that he would make them take the men back as he had been up against propositions like that before. He stated that they would tie up all the cotton, oil and cake in the Boswell Company and he could tell Hammond that they had tied up as much

as \$1,000,000.00 worth of property and he understood that Boswell had that much at times; that they would tie it up so it couldn't move. Prior then asked Gordon Hammond to make an appointment with Louis Robinson for him the following day, which was done. (Tr. pp. 2572, 2573).

The foregoing conversations as related by Gordon Hammond were not denied.

Contrary to the statement in Finding No. 74 the evidence fails to show that Louis Robinson ever told Prior that the company would take back "all of the union men except Martin". The testimony is this regard has been hereinabove set forth.

As shown by the evidence above discussed it was clearly established that Prior was insisting on November 28th that all of the union members who had left work on November 18th be immediately reinstated regardless of the fact that there was not sufficient work then available for all of these men. Prior denied that he instructed the complaining union men not to apply for work but the evidence shows that none of them did apply for work after that date. Even though the undisputed evidence shows that Louis Robinson offered to reemploy Spear during the conference of November 28th, Prior testified that Spear never applied for work to his knowledge. (Tr. p. 504). Spear testified that he didn't know about this offer to reemploy him until he heard Prior's testimony at the hearing. (Tr. p. 926).

The evidence shows without dispute or contradiction that at the time of Prior's conference with Louis

Robinson on November 28th jobs were not available at the plant of the Boswell Company for all of the union members unless the company laid off some of the men who were on the job at that time. (Tr. p. 2422). Martin had proveiously worked on gin No. 4. Gin No. 4 closed on November 26th (Tr. p. 2549) and the other gins were about to close. The evidence is undisputed that there was a very short cotton crop in 1938 and Prior's testimony regarding his conference with Gordon Hammond on November 17, 1938 shows that he and his union members were fully aware of that fact. He testified as follows concerning that conference:

“Mr. Spear stated that the membership of the union was not asking for any increase in pay at that time, that they were all familiar with the fact that there was a shorter cotton crop that year and familiar with the conditions, and the primary interest was in trying to provide as much employment for the season for as many employees as possible.” (Tr. p. 126).

The evidence shows conclusively that the management of the Boswell Company was willing to take back such of the union men as it had work for from time to time, but Prior repeatedly insisted that all of them be taken back immediately when he knew as shown by the evidence that the ginning season was practically over and the oil mill was not in operation and consequently knew that work was not available for all of his union men.

The undisputed evidence also shows that at the

time of the meeting of about November 28th between Prior, Martin and Louis Robinson, Prior knew that at least some of the union men who had left the plant on November 18 had continued to receive pay from the Boswell Company, even though they were not working. He testified that he knew this fact because he had procured photostatic copies of some of the checks. (Tr. pp. 497, 498).

The following portion of Finding No. 74, to-wit:

“It is indeed strange that on that same day, November 28th, Robinson wrote and mailed registered letters to R. K. Martin, L. E. Ely and George Andrade advising each of them that their employment with the respondent terminated on November 26th at 5 p. m.”,

is entirely unwarranted by the evidence. As above pointed out, the evidence shows that the company was perfectly willing to take back all of the union men from time to time as it had work available for them but Prior insisted that they be taken in a body. The persons to whom those letters were sent were persons whose particular jobs had been completed. The evidence shows without dispute that the sole and only reason for sending those men registered letters was that Louis Robinson had agreed to continue them on the payroll until the jobs on which they worked had been completed and when those jobs ran out they were not available at the plant to notify them of that fact. Louis Robinson testified that he thought it wise to mail them letters so that there would be no misunderstanding about the amount of

pay they might have coming and he thought it wise to register the letters so as to be positive that they had been received. (Tr. pp. 2491, 2492).

The statement in said Finding No. 74 that Robinson advised Prior on November 19th and November 28th "that the union men would be taken back to work" is contrary to the evidence and misleading. On November 19th Robinson told them that they could go back to work. At that time there was work for them to do. As shown by the evidence above set forth, both he and Gordon Hammond told Prior on November 28th that they would take the men back as they had work available for them.

The portion of said Finding No. 74 wherein it is stated that Hammond and Robinson were "deceitfully misadvising Prior and his committee" is contrary to the evidence and entirely unwarranted as shown by the evidence as set forth herein.

The following portion of said Finding No. 74, to-wit:

"The letters show conclusively that the said members of the said Local had been definitely discharged from their employment with respondent November 28, 1938"

is misleading. As pointed out above, the letters were sent to notify the men that their jobs had been completed. In other words, the effect of the letters was just the same as any layoff except the men were in the favorable position of drawing pay without working and it was necessary to notify them when their pay stopped because they weren't there to be notified in person.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 86.

Exception No. 87.

The respondents, and each of them, hereby except to Finding No. 75, page 38 of the Intermediate Report, upon the ground that the statements therein contained do not fully or accurately state the evidence with respect to the matters therein mentioned, and particularly in that it is not shown or stated therein that the conference had by Prior with Louis T. Robinson on January 18, 1939, was the result of a previous conference held on January 17, 1939, in which Mr. Howard, an investigator for the National Labor Relations Board participated.

The evidence shows that on January 17, 1938, a meeting was held at the Company's office between Prior, Spear, Farr, Martin, Andrade, Johnston, and Winslow, representing the Union, and Mr. Louis Robinson and Mr. William Boswell, representing the Boswell Company. In addition thereto, there were present at the meeting Mr. Maurice Howard, field examiner of the National Labor Relations Board, 21st Region, and Mr. Bill Robinson and Mr. Kelley Hammond, who were employees of the Boswell Company (Tr. p. 141 and 2423).

Louis Robinson testified that Mr. Howard was carrying on an investigation in the plant and on January 17, 1939, was discussing it with him. Howard contended that after Louis Robinson had told the union men to go back to work on November 18 that they were bodily ejected from the job. Louis Robin-

son denied this and Howard offered to prove that he was correct. Howard called in the various employees and questioned them. He asked them, particularly Spear, if any one had hurt them or cursed them or ordered them off the property and Spear and the other men said none of those things had occurred. Howard then asked the men if they were afraid that something might happen and some of them said they were. Howard stated to Robinson that the men left the property because they feared violence and that it was the same thing as being bodily ejected. Robinson testified that Spear then described the incident of November 18th before the men came to the office. After that Howard said if they had done that to him he would have shot all three of the men and that Lonnie Spear would have been fully justified in shooting all three (Tr. pp. 2424 to 2426).

Mr. Robinson also testified that during the course of the meeting with Prior, Howard, and the others on January 17, 1939, he stated, in effect, that no foreman or any one else was authorized by the Company to make any statement regarding any employee's membership or non-membership in any union, and that no employee's position would be affected because of membership in any union (Tr. p. 2438); that he made this statement because Mr. Howard discussed the matter with him and he explained the Company's position (Tr. p. 2440). Mr. Robinson also testified that he had made substantially the same statement to Mr. Prior during the course of the conversation which took place about September 1, 1938, and also

in the conversation which took place on the morning of November 19, (Tr. p. 2440).

Mr. Prior's version of this meeting was as follows: He testified the union representatives stated that on November 18, Bill Robinson and Kelley Hammond had shut down some of the machinery in the gins at the time of the eviction of the union employees (Tr. 141). Bill Robinson and Kelley Hammond admitted they did shut down some of the machinery. Mr. Louis T. Robinson stated that neither Mr. Bill Robinson nor Mr. Kelley Hammond were authorized to cut the power off the machinery, and that no one had been authorized on behalf of the Company to interfere with the operations of the plant. Prior testified that was all that he recalled regarding what was said at that conference (Tr. p. 142-3).

Mr. Robinson testified that on the morning of January 18, 1939, Mr. Howard again returned to the office, and they had a further conversation. No one else was present (Tr. 2437-8). In this second conversation with Mr. Howard the latter stated that he wanted the Company to discharge all the non-union employees who had taken part in the events of around 10:00 o'clock of the morning of November 18, and wanted the Company to hire union men in their places, and wanted the Employees' Association dissolved. Mr. Robinson told him there was no labor dispute between the management and its employees; that any dispute that existed was between two groups of employees; that the Company was not going to fire anybody that was giving satisfactory service on the job; and that the company had nothing to do with the organization of the Employees' Association

and would make no efforts or attempts of any kind to dissolve it. Mr. Howard then stated that if Mr. Robinson did not do that, he would call the Labor Board hearing and Mr. Robinson would get a lot worse. Mr. Howard took a little pamphlet out of his pocket that had a number of decisions in it and pointed out some of the decisions that had been found at labor board hearings. Mr. Robinson told Mr. Howard that he thought none of those cases were similar to the Company's position and he would stand just where he told him (Tr. p. 2441). Mr. Howard then said, "All right. Then you will get the board hearing." (Tr. p. 2442).

Mr. Robinson's testimony with respect to the foregoing conversations with Mr. Howard were not denied, and his version of said meetings, particularly that of January 17, 1939, is substantiated by the testimony of Walter Winslow (Tr. 1083-5), George Andrade (Tr. 1132-7), and L. A. Spear (Tr. 966).

Regarding his conference with Prior on January 18, 1939, referred to in said Finding, Louis Robinson testified that Prior called on the afternoon of that day and said he was calling on Robinson at the suggestion of Mr. Howard and he wanted to know if there had been any change in the company's position after Mr. Howard's visit. Robinson stated that he told Prior, "No, Mr. Howard's visit had not changed the company's position at all" and that that was all of the conversation (Tr. p. 2445).

Mr. Robinson's testimony with respect to the two conferences held with Mr. Howard on January 17th and 18th, 1939, respectively, in which he outlined

the Boswell Company's labor policy, is also substantiated by the fact that on January 20, 1939, (which was only three days after the meeting of January 17, 1939) Prior personally inserted a notice in a newspaper published in Corcoran, California, known as the Corcoran News (Tr. p. 432, and Boswell Exhibit No. 3), which said notice read as follows:

“The Corcoran News
January 20, 1939.

Attention

J. G. Boswell Co. Employees

“Many employees of the J. G. Boswell Company have stated that foremen of the company have told them that membership in the American Federation of Labor would affect their employment with the company.

“Mr. Louis Robinson, general manager of the Corcoran plant, stated in the presence of the following men who attended a meeting in his office January 17, 1939:

“Maurice Howard, Field Examiner of the National Labor Relations Board

Wm. Boswell, of the company

E. F. Prior, Sec.-Trea., California State Council of Soap and Edible Oil Workers

Wm. Robinson, employee of company

Kelly Hammond, employee of company

L. A. Spear

Elgin Ely

O. L. Farr

George Andrade

R. K. Martin

Walter Winslow

W. R. Johnston

Officers and members of the Cotton Products and
Mill Workers Union No. 21798:

“NO FOREMAN OR ANYONE ELSE IS
AUTHORIZED TO MAKE ANY STATE-
MENT REGARDING ANY EMPLOYEE'S
MEMBERSHIP OR NON-MEMBERSHIP
IN ANY UNION BY THE COMPANY AND
THAT NO EMPLOYEE'S POSITION
WOULD BE AFFECTED BECAUSE OF
MEMBERSHIP IN ANY UNION.”

After the declaration of company policy by
Mr. Robinson, no employee of the company
should be afraid to attend a meeting for the pur-
pose of learning the history and gains made by
organization in their industry—they really owe
it to themselves to learn everything possible
about these new developments.

A MEETING WILL BE HELD IN THE
CORCORAN AMERICAN LEGION HALL

January 23, 1939, at 8:00 P.M.

for the purpose of discussing labor problems
with the employees of this industry.

COTTON PRODUCTS & GRAIN MILL
WORKERS UNION No. 21798

R. K. MARTIN, Secretary
CALIFORNIA STATE COUNCIL OF
SOAP AND EDIBLE OIL WORKERS
E. F. PRIOR, Secty-Treas.”

The evidence shows without dispute that the con-
ference which Prior had with Louis T. Robinson on

January 18, 1938, as mentioned in said Finding No. 75, was prompted by and was the direct result of the conference above mentioned which had taken place between Mr. Robinson, Mr. Prior, Mr. Howard, and others on January 17, 1939, and the one between Mr. Robinson and Mr. Howard on the morning of January 18, 1939.

The respondents, and each of them, specify all of the foregoing as Exception No. 87.

Exception No. 88.

The respondents, and each of them, hereby except to the whole of Finding No. 76, page 38 of the Intermediate Report, on the ground that said Finding is contrary to, and is not supported by, the evidence, and upon the further ground that there was no authority established from the respondent Boswell Company, or any other respondent, to any of the persons who participated in the alleged eviction to speak or act for, or on behalf of, any of the respondents with respect to any of the matters involved in this proceeding.

The evidence affirmatively shows that the alleged eviction of these men was not the result of any acts or action on the part of the respondent Boswell Company, or any of the other respondents, and was not authorized, sanctioned, or approved by said or any respondent.

The evidence further establishes that none of the men named in said Finding were ever refused re-employment, but, on the contrary, none of said men, with the exception of Joe Briley, ever applied for

employment after November 18, 1938. The evidence also shows without dispute that Joe Briley, a member of Prior's union, applied for work and was reemployed a few days after November 18, 1938, and thereafter continued to work off and on as work was available (Board's Exhibit No. 3).

The evidence also shows without dispute that all of said men, with the exception of Joe Briley who continued to work, were, subsequent to November 18, 1938, carried on the pay roll, and, although they did not do any further work, were each paid the amounts they would have received had they continued on their respective jobs up to the time that said jobs terminated in their natural course.

The evidence also shows that although the Company informed Mr. Prior, as representative of these men, that they could come back to work at any time there was work available, Prior refused to permit any of them to return to work unless they were all put back in a body.

The undisputed evidence shows that Prior and members of his union knew and recognized on November 17, 1938, that the Company was then laying off certain men, and was about to close down one or more of the gins and the work looked as though it was just about to run out if the Company continued working the customary number of hours (Prior's testimony, Tr. p. 447-8).

The evidence also shows that when the seasonal operation of ginning was practically completed in November 1938, there was not sufficient work available at the plant for all of Prior's men unless the

Company should lay off some of the other employees who were working on November 18, 1938, and who had continued to work (Tr. 2422).

The following evidence bears upon the matters referred to in said Finding, but was entirely omitted from the Intermediate Report:

Upon cross-examination, Martin testified that, after waiting a matter of fifteen or twenty minutes, he and some of the other men took their coats and went home, after they went over and had a conference with Mr. Spear, but they did not go back in to see Mr. Louis Robinson before they left the plant (Tr. 564).

On the following day, to wit, November 19, 1938, Gordon Hammond, at the request of General Manager Louis T. Robinson, thoroughly investigated the matter for the purpose of ascertaining the cause of the trouble and, on said date, made a written report of his findings to Mr. Louis T. Robinson. Said report was introduced in evidence by the Board. (Board's Exhibit No. 25). Said exhibit reads as follows:

“November 19, 1938

“Memo to: Mr. L. T. Robinson

“From: Mr. G. L. Hammond

“I have made quite a lot of inquiries into the trouble the employees had yesterday while I was away. There seems to have been a misunderstanding between some of the employees as to who would supervise the work and working hours at the plant, myself or the employees that

had affiliated themselves with the A. F. L. Union.

“It is my understanding that they had decided to get together at 10 o’clock when L. A. Spear came to work and see what it was all about, as he was President of the local Union. In trying to determine why and what the cause of the trouble was and of the rushing of L. A. Spear out of the gate and into the office, my understanding is that O. L. Farr, R. K. Martin and some of the others that possibly had joined the Union were passing the word along that they were giving them their last chance to get in the Union or they would lose their jobs, but were passing the buck to L. A. Spear and he wasn’t there yet. That seems to be the reason of their closing down the gin after 10 o’clock.

“I find that Lonnie Spear did get on the bale wagon and tell them that they were going to prorate the work and work eight hours only, and if they wanted to work here they would have to join their Union.

“Then W. C. Nichols got up some place where he could ask Spear outright if he understood him to say that they were taking charge of all the work and Spear answered yes. Then Nichols asked Spear if he meant that for the boys to work here they would have to join the Union, and Lonnie answered that he meant that very thing.

“Then someone in the crowd said “Let’s throw him out”, and they proceeded to rush him out of the gate and into the office.

“I am sure this would never have happened if I had been here, because everything was ok when I left about 8:30. I am very positive nothing like that would ever have happened anyway if Lonnie hadn’t told them they were going to prorate the work and working hours and that they would have to join the Union to work here.

“I think they should have continued to operate and let me handle the problem when they knew I would be back that evening.

(Sgd.) G. L. HAMMOND”

Said Finding is not only unsupported by any substantial, competent or credible evidence, but is not even supported by the incompetent hearsay testimony upon which such finding is based almost in its entirety, which testimony was erroneously admitted over the repeated objections of the respondents. The respondents objected to all of the incompetent hearsay testimony introduced at the hearing and duly excepted to, and do hereby except to, all of the erroneous rulings of the Trial Examiner permitting the introduction of such testimony. Without in any way waiving their objections and exceptions thereto, and without in any way conceding the competency thereof, respondents call attention to the following portions of such incompetent hearsay testimony merely for the purpose of demonstrating that the Trial Examiner failed to correctly set forth such

incompetent hearsay testimony with respect to the matters referred to in said finding:

Martin testified that after the men left the office and returned to their respective jobs there was a bunch gathered around Spear, talking to him, and Bill Robinson came up and said "What are you going to do, Lonnie? It seems as though the boys aren't going to work with you." Spear said, "If that is the way the boys feel about it, we will go home then". Bill Robinson then said, "It looks like the thing to do, is to get this straightened out". (Tr. p. 541-2). After this the union men went home (tr. 543).

Wingo testified that, after he went back to the gin and Kelley Hammond shut his machinery off, he, Wingo, said to Farr, "Let's go. There is no use trying to work here." That he understood the employees had ordered all union men to leave (Tr. p. 1030, 1031).

Spear testified that after Mr. Louis T. Robinson instructed the men to return to their work and he would come out later and straighten the matter out, he, Spear, returned to the gin where he had been working and Tom Hammond stopped Farr's gin. Then Bill Robinson came along and said "Here boys, this won't do, Mr. Robinson wants the machinery to run" (Tr. p. 877). Then somebody yelled, "We are not going to work with these union men" (Tr. p. 879). Bill Robinson then said, "If you union boys can't operate this place, you'd better go home until we get this straightened out". Farr asked

Bill Robinson if that was an order, and Bill said "No, that is a request" (Tr. p. 880-1); that he thought it would be a good idea for the union men to go home until they got this matter ironed out (Tr. p. 881). Spear remained at the gin possibly ten or fifteen minutes after he got back to it from the office (Tr. p. 881). Kelley Hammond came along and talked with Spear. (Tr. p. 883). Spear then sat down on the stairs, stalling for time and waiting for somebody in authority to come around, but Louis T. Robinson did not come out, and as someone suggested that he depart he left and went to Farr's house (Tr. p. 884).

Farr testified that, after he got back to the gin on the morning of November 18, after Louis T. Robinson had instructed all the men to return to their jobs, he met Bill Robinson, who stated there did not seem to be enough union men to run the gins, and suggested that they should go home. Wingo, who was present, spoke up and asked Bill Robinson if he was telling them to go home as a foreman, and Bill Robinson replied "No, not as a foreman, but that is my idea that you men had better go home". Farr stood around a little while, but nobody said anything to him, except Bill Robinson, so he left (Tr. p. 290).

Andrade testified that, after he left the office on the morning of November 18, he went back to where he was working and sewed two sacks of cotton seed, but the machinery then stopped, so he went in to the gin building (tr. 1113). Right after he left the

gin he met Martin and Wingo on the outside and Bill Robinson walked up to them (tr. 1114). Bill Robinson said there wasn't enough union men to run the gins and they had to run, and the non-union boys would not work with them. Wingo asked Bill Robinson if that was an order, if he was giving that order as a foreman, and Bill Robinson said "No" that was just a suggestion to avoid further trouble. Andrade, Wingo, and Martin figured they were through there so they picked up their things and went to Mr. Farr's residence (tr. 1115).

The respondents, and each of them, specify all of the foregoing as Exemption No. 88.

Exemption No. 89.

Respondents, and each of them, hereby except to Finding No. 77, page 39 of the Intermediate Report, upon the ground that certain statements therein contained and relating to the matters hereinafter specified are contrary to and unsupported by the evidence and upon the ground that said finding does not fully or accurately state the evidence with respect to the matters therein contained.

The portion of said finding wherein it is stated that Powell "later was put in charge of the main engine plant" is contrary to the evidence. In this regard Powell testified on direct examination that he merely "operated the engines" at the main power plant for "something over a year". (Tr. p. 583). Upon cross-examination he testified that after the 1936-1937 ginning season ended in January or February of 1937 he was put at work engineering. When

Bill Robinson if that was an order, and Bill said "No, that is a request" (Tr. p. 880-1); that he thought it would be a good idea for the union men to go home until they got this matter ironed out (Tr. p. 881). Spear remained at the gin possibly ten or fifteen minutes after he got back to it from the office (Tr. p. 881). Kelley Hammond came along and talked with Spear. (Tr. p. 883). Spear then sat down on the stairs, stalling for time and waiting for somebody in authority to come around, but Louis T. Robinson did not come out, and as someone suggested that he depart he left and went to Farr's house (Tr. p. 884).

Farr testified that, after he got back to the gin on the morning of November 18, after Louis T. Robinson had instructed all the men to return to their jobs, he met Bill Robinson, who stated there did not seem to be enough union men to run the gins, and suggested that they should go home. Wingo, who was present, spoke up and asked Bill Robinson if he was telling them to go home as a foreman, and Bill Robinson replied "No, not as a foreman, but that is my idea that you men had better go home". Farr stood around a little while, but nobody said anything to him, except Bill Robinson, so he left (Tr. p. 290).

Andrade testified that, after he left the office on the morning of November 18, he went back to where he was working and sewed two sacks of cotton seed, but the machinery then stopped, so he went in to the gin building (tr. 1113). Right after he left the

gin he met Martin and Wingo on the outside and Bill Robinson walked up to them (tr. 1114). Bill Robinson said there wasn't enough union men to run the gins and they had to run, and the non-union boys would not work with them. Wingo asked Bill Robinson if that was an order, if he was giving that order as a foreman, and Bill Robinson said "No" that was just a suggestion to avoid further trouble. Andrade, Wingo, and Martin figured they were through there so they picked up their things and went to Mr. Farr's residence (tr. 1115).

The respondents, and each of them, specify all of the foregoing as Exception No. 88.

Exception No. 89.

Respondents, and each of them, hereby except to Finding No. 77, page 39 of the Intermediate Report, upon the ground that certain statements therein contained and relating to the matters hereinafter specified are contrary to and unsupported by the evidence and upon the ground that said finding does not fully or accurately state the evidence with respect to the matters therein contained.

The portion of said finding wherein it is stated that Powell "later was put in charge of the main engine plant" is contrary to the evidence. In this regard Powell testified on direct examination that he merely "operated the engines" at the main power plant for "something over a year". (Tr. p. 583). Upon cross-examination he testified that after the 1936-1937 ginning season ended in January or February of 1937 he was put at work engineering. When

asked what he meant by the term engineering he testified that it was "oiling, swabbing up grease, wiping machinery and keeping things up spick and span" and that the engines he was referring to were in the generator room where the power is generated. (Tr. p. 640)

The evidence affirmatively shows that Powell was engaged principally in the performance of seasonal work and odd jobs. His testimony shows that he originally came from Georgia to California in 1921 and lived in California off and on after that (Tr. p. 631); that prior to the time that he first went to work for the respondent Boswell Company in August 1936 he had been in Georgia and had not been employed for about two years (Tr. pp. 632 and 638). When he first started to work for the Company in August 1936 he did odd jobs until about September 1936 (Tr. p. 639). Then he worked in the gins until the ginning season ended in January or February 1937 (Tr. pp. 639-40). He was then put to work in the power plant where he oiled and wiped machines and kept things spick and span. He continued on that job until sometime in August 1937 (Tr. p. 640). He then took a couple weeks vacation, but was laid off immediately after he returned from vacation in August 1937 (Tr. p. 641). A few days later he was given a job digging ditches and doing work around the plant (Tr. p. 642). He continued at this type of work until September 1937 when the gins opened up and he was given a job tying cotton (Tr. p. 643). He remained at this

job until about September 27, 1937 when he injured his finger (Tr. pp. 583-4). He was off about two months with this injury (Tr. p. 584) and during the time he was off with the injury he received workman's compensation payments (Tr. pp. 643-4). After he had been released by the doctor he returned to work (Tr. pp. 584 and 645). He was put to work doing cleaning up work and other odd jobs (Tr. pp. 584 and 653). He continued doing this type of work until about the first of January 1938 (Tr. p. 654), but did not work steadily during this last mentioned period (Tr. p. 655). About the first of the year 1938 Mr. Gordon Hammond offered him a job as watchman (Tr. pp. 646 and 657), but he did not take it. Near the end of the year 1937 he got to drinking and gambling and stopped working at these odd jobs for Boswell Company, and left and went to Los Angeles and San Bernardino (Tr. pp. 657-8).

The Social Security record (Board's Exhibit No. 3) shows that Powell received a check in amount of \$12.60 for the week ending January 6, 1938, but on cross-examination he testified he did not recall working or receiving this check (Tr. p. 660).

Prior to leaving for Los Angeles in January 1938 he had issued a worthless check and after he left he was arrested and was brought back to Kings County in February 1938, was convicted of a felony based upon the issuance of such worthless check and was sentenced to and did serve four months in the County Jail as a part of three years probation which

was granted him (Tr. p. 637). In addition to the worthless check upon which he was convicted he had also prevailed upon Mr. Gordon Hammond to endorse for him another worthless check in amount of \$60.00 which he had drawn on a bank in Georgia (Tr. p. 661), in which bank he had no account (Tr. p. 670). He was not working for Boswell Company when he got Hammond to endorse this check (Tr. p. 690). He had cashed this \$60.00 check endorsed by Mr. Hammond and lost the money in a poker game (Tr. p. 664). Gordon Hammond was later obliged to pay the check but he did not sign any complaint against Powell, and Powell later repaid this \$60.00 check out of his salary (Tr. pp. 667-68). Powell also admitted on cross examination that in addition to his conviction on the bad check charge aforementioned he had also previously been convicted of a felony (stabbing) in the state of Georgia (Tr. p. 688).

After Powell was released from jail, following his conviction on the bad check charge, he returned to work for the Boswell Company on July 3, 1938 (Tr. p. 585) and thereafter worked until he left the plant following the incidents of the morning of November 18, 1938. Powell never applied for work after this last mentioned date (Tr. p. 2637).

Respondents, and each of them, specify all of the foregoing as Exception No. 89.

Exception No. 90.

Respondents, and each of them, hereby except to Finding No. 78, page 39 of the Intermediate Report,

upon the ground that certain portions thereof relating to matters hereinafter designated are contrary to and unsupported by the competent evidence, and upon the ground that it inaccurately sets forth the testimony, and upon the ground that certain portions thereof are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents as hereinafter designated.

No evidence was introduced which shows or tends to show that respondents or any of them conferred any authority upon Tom Hammond or Bill Robinson, or either of them, or any other person referred to in said finding, to speak or act for or on behalf of any of the respondents in regard to the matters therein mentioned.

The statement in said finding that the men "were forced out of their employment" is contrary to the evidence. The evidence shows that none of the men referred to in said finding were forced out of their employment but, on the contrary, that after discussing the matter among themselves they decided it would be better for them to leave.

The evidence also affirmatively shows that none of the respondents authorized or in any way participated in the alleged eviction of the union men, and did not in any way sanction or approve the action taken by any of the persons who participated in the alleged eviction on the morning of November 18, 1938.

The portions of said finding relating to two al-

leged conversations between Powell and Bill Robinson are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents. The respondents at the time of the hearing objected to the introduction of the testimony regarding said alleged conversations between Bill Robinson and Powell upon the ground that such testimony was hearsay; that it was not binding on any of the respondents, no authority having been shown by the respondents to Mr. Bill Robinson to speak for respondents or any of them with regard to any of the matters under investigation, and also upon the ground that such testimony was incompetent, irrelevant and immaterial. The objections were erroneously overruled by the Trial Examiner and exceptions were duly taken thereto (Tr. p. 614; 621, 622). The respondents and each of them hereby except to such rulings upon all of the grounds above stated which were urged in support of the objections.

The portion of said finding relating to conversations between Powell and Tom Hammond are based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents. The respondents at the time of hearing also objected to the introduction of the testimony regarding the alleged conversations between Tom Hammond and Powell, upon the ground that such testimony was hearsay, incompetent, irrelevant and immaterial and not binding upon any of the respondents. The objections were erroneously overruled

by the Trial Examiner and an exception was duly taken thereto (Tr. pp. 614-17; 618-19; 620-1). The respondents, and each of them hereby, except to such rulings upon the grounds above stated which were urged in support of the objections.

The respondents, and each of them, hereby specify all of the foregoing as Exception No. 90.

Exception No. 91.

Respondents hereby except to the whole of Finding No. 79, pages 39 and 40 of the Intermediate Report, upon the ground that it is contrary to and unsupported by the competent and credible evidence and upon the ground that certain portions thereof hereinafter designated are based solely on incompetent testimony erroneously introduced over the objections of respondents.

The evidence shows that Powell's testimony was thoroughly discredited and impeached. He admitted two prior convictions for felonies and his testimony throughout was contradictory, uncertain and unreliable. One of the felonies for which he was convicted was based upon the issuance of a worthless check upon a bank in which Powell had no account. When questioned regarding the nature of this offense at the hearing in this case he testified that it was a gambling debt and that he had purchased chips in a poker game with it. He was thoroughly impeached and discredited by the original transcript in the preliminary hearing in said criminal case. Said transcript showed without doubt that the complaining witness had testified in Powell's presence

that he cashed the check for Powell and gave him three \$5.00 bills. It likewise demonstrates that Powell himself testified and did not deny that he received three \$5.00 bills for the check in question. The transcript further shows that he was given an opportunity to make any comment which he chose and he made no comment. When confronted with this documentary proof Powell testified in this case that he could not recall anything that happened at the hearing.

Powell admitted also the issuance of another worthless check for \$60.00 and the fact that he induced Gordon Hammond to endorse it for him. The record shows that Gordon Hammond at no time brought criminal charges against Powell but that the check in question was issued by Powell upon a bank in which he had no account.

The other conviction for a felony was for stabbing a man in Georgia.

Powell's testimony throughout as demonstrated by the record is so contradictory that it is entirely worthless. For example, Powell testified on direct examination that he attended the charter meeting of the union on November 5, 1938 and that he told Gordon Hammond the next day about his attendance at the meeting. (Tr. p. 592). However, upon cross-examination he denied having given this testimony and testified that he did not attend any union meetings or gatherings of union men prior to November 14, 1938. (Tr. p. 716). He first testified on cross-examination that he had known or heard since July

13, 1938 that Prior was trying to organize the union. (Tr. p. 718). However, he later testified that it was only about three months before November 18, 1939 that he first heard these rumors. After having testified that he attended the charter meeting of the union held November 5, 1938 he later testified that he first saw the charter November 16, 1938. (Tr. p. 739).

On direct examination he testified that he talked with Gordon Hammond about the union on November 6, 1938. (Tr. p. 586). However, upon cross-examination he admitted that he was mistaken regarding his previous testimony and that he was also mistaken as to the date of the first union meeting he attended. He then claimed that since he first testified he had talked the matter over with his wife who had refreshed his memory. (Tr. p. 749).

He testified definitely that he did not know his good friend Martin had joined the union until November 16, 1938 (Tr. pp. 763, 824) but he later identified his application for union membership (Boswell's Exhibit No. 5) which was dated November 11, 1938, filled in in Martin's handwriting and he admitted that he turned his application for membership over to Martin whom he knew was handling the Secretary and Treasurer's duties. (Tr. pp. 767, 824, 826).

He testified on cross-examination that about November 20, 1938 he had a conversation with Gordon Hammond with reference to a letter he had received from the company and asked Hammond what it meant. Upon request on behalf of the respondents

he produced the letter referred to in said conversation and it appeared therefrom that the letter was dated November 28, 1938. The letter was admitted in evidence as Boswell's Exhibit No. 6. (Tr. pp. 804, 805).

It is stated in said finding that the alleged conversation with Clyde Sitton was about the 20th of November 1938. However, Powell testified that the date of the conversation was "a few days, just a few days after November 18" (Tr. p. 625). When asked to state the approximate date when he saw Mr. Gordon Hammond after that time, he first testified it was around the 25th of November; then that it was the 15th, and then that it was around the 20th (Tr. p. 627).

The alleged conversation between Powell and Gordon Hammond which is referred to in said finding was categorically denied by Gordon Hammond. (Tr. pp. 2586, 2587). Hammond also denied having at any time sent Clyde Sitton to notify Powell to come and see him. (Tr. p. 2586).

The portion of said finding relating to an alleged conversation between Clyde Sitton and Powell is based solely upon hearsay and incompetent testimony which was erroneously introduced over the objections of respondents.

The respondents at the time of the hearing objected to Powell's testimony with regard to the alleged conversation between him and Clyde Sitton upon the ground that such testimony was hearsay and that such conversation was not binding upon

any of the respondents to the proceeding, no authority having been shown from the respondent Boswell Company to Sitton to speak for it with regard to any of the matters under investigation in said proceeding. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 625-627). The respondents and each of them hereby except to such ruling upon all of the grounds above stated which were urged in support of the objection.

The following portion of said finding, to-wit: "Hammond never notified Powell to return to work" is irrelevant to the issues of this case. The evidence shows no promise or agreement whatsoever on the part of Hammond at any time to notify Powell to return to work, and Powell never applied for work after November 18, 1938. (Tr. p. 695; p. 2637).

Respondents, and each of them, specify all of the foregoing as Exception No. 91.

Exception No. 92

The respondents, and each of them hereby, except to Finding No. 80, page 40 of the Intermediate Report, on the ground that it is incomplete and that the statement therein contained that "Powell was discharged by respondent on November 28, 1938, because of his union activities and membership in Local No. 21798" is not supported by the evidence and is contrary to the evidence.

The evidence affirmatively shows that the reason Powell was laid off on November 28, 1938, was solely because of the following facts:

First, that there was not sufficient work available for all of the men who had previously been working at the plant on November 18, 1938, because of the shortage of cotton and the seasonal decline in operations (Tr. p. 2422), and, second, because the last job held by Powell with the Company was as helper in the warehouse. This was Fred Armenta's regular job but he had not been working because of injury. Armenta recovered from his injury and went back to his regular job and Powell's further services were no longer required. (Boswell Exhibit No. 16). His lay-off was because of the foregoing, and not because of any union activities or membership.

In addition to the matters referred to in said Finding, the evidence shows that some time after December 1, 1938, Powell contacted Gordon Hammond regarding the injury which he had previously received while working at the Boswell plant. He applied for additional compensation and was rated by the Industrial Accident Commission as permanently disabled and awarded compensation upon that basis for a period of 63 weeks (Tr. pp. 695 to 698).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 92.

Exception No. 93.

The respondents, and each of them hereby, except to Finding No. 81, pages 40 and 41 of the Intermediate Report, upon the ground that the matters therein contained are not supported by the evidence and do not fully or accurately state the evidence with

respect to certain of the matters therein mentioned and hereinafter referred to.

The evidence shows that Eugene Clark Ely, during the time he was employed by the Boswell Company, worked merely at odd jobs in connection with certain of the Company's seasonal operations. He was first employed in September, 1937, as an electrician's helper at 35 cents an hour. He worked at this job about four months and then worked as watchman in the cotton yards for about two weeks. Thereafter he went to work in the oil mill (Tr. p. 1351). His job in the oil mill consisted of just cleaning up, keeping the expellers cleaned out and pushing the wheelbarrow. He continued at this job until about March 24, 1938, when he was laid off. Although he was not sure when he next came back to work, his Social Security record (Board's Exhibit No. 3) shows that the next work he did for the Company after March 24, 1938, was during the week ending May 5, 1938. He then worked two or three weeks running planting seed (Tr. p. 1352). He was then laid off again and returned to work about July 7, 1938, although he was not positive as to the date (Tr. p. 1371). His Social Security record (Board's Exhibit No. 3) shows that after May 19, 1938, the next work done by him was during the week ending July 7, 1938. After returning to work on July 7, 1938, he baled straw for two or three weeks, approximately between July 7 and 21 (Tr. p. 1371; Board's Exhibit No. 3). He was then laid off again about July 21, 1938, and did not do any further work for

the Company until October, 1938 (Tr. pp. 1352 and 1371). At this time he was engaged in running a cotton drier. After working on this job for four days his pay was increased from 35 cents to 40 cents an hour. He worked on the cotton drier until some time in December, 1938, when some of the gins shut down because it was the end of the ginning season, and then went to work on the construction gang during the month of January, 1939. While on the construction gang he worked part of the time at the plant and part of the time at other places (Tr. p. 1372). At his own request he laid off on Sunday, January 29, 1939. He did not work because he had hurt his shoulder, it was raining and there was not much to do (Tr. p. 1355).

The respondents at the time of the hearing objected to testimony by Ely respecting an alleged conversation which he had with Rube Lloyd on Saturday, January 28, 1939, relative to his taking the next day off, upon the ground that such conversation was hearsay and was not binding on the respondent and no authority had been shown for Rube Lloyd to speak for any of the respondents. This objection was erroneously overruled by the Trial Examiner and an exception was taken to such ruling (Tr. p. 1355). The respondents, and each of them, except to such ruling upon the grounds above stated which were urged in support of the objection. The portion of the finding relating to said conversation was based on said hearsay evidence.

The respondents at the time of the hearing also

objected to Ely's testimony, regarding what occurred at Bakersfield on January 29, 1939, in front of Teamsters Hall, upon the ground that same was incompetent, irrelevant and immaterial. This objection was erroneously overruled by the Trial Examiner and an exception taken (Tr. p. 1357). After this objection was overruled Ely testified that he, Prior, Elgin Ely, W. R. Johnson, R. K. Martin and several other fellows from the plant were standing out in front of the Teamsters Hall in Bakersfield, and Mr. Bill Boswell came by driving about fifteen miles an hour and he gave them the once over as he went by. At the time of the hearing the respondents moved to strike out this answer as not responsive to the question and called for a conclusion of the witness. This motion was erroneously denied and an exception taken (Tr. p. 1357). The respondents and each of them hereby except to the ruling on the above mentioned objection and to the denial of said motion to strike.

W. W. Boswell testified that he is in charge of the Company's cattle operations and has no supervision over any of the employees who work at the Coreoran plant (Tr. p. 2776); that he did not know Eugene Clark Ely prior to the commencement of the hearing in this case, and although he might have seen him about the plant he did not know who he was and did not remember seeing him. He testified that he did not see Ely in Bakersfield on January 29th and in fact had never heard of nor seen the Teamsters Hall in Bakersfield, and did not know who Ely was at that time (Tr. p. 2777).

The portion of said Finding wherein it is stated that W. W. Boswell is a supervisory employee of the Boswell Company is contrary to the evidence. The only evidence in this regard was the testimony of W. W. Boswell, above mentioned, that he had no supervision over any of the employees at the Corcoran plant. No evidence was introduced to the contrary or to show that W. W. Boswell was in any manner a supervisory employee insofar as the matters in this case are concerned. No evidence was introduced to show that he had charge of the meal or grain for the company.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 93.

Exception No. 94.

The respondents, and each of them hereby, except to Finding No. 82, page 41 of the Intermediate Report, on the ground that said Finding is not supported by the evidence and is contrary to the evidence, and does not fully or accurately state the evidence with respect to the matters therein referred to.

Gordon Hammond testified that Ely was not discharged on or about January 30, 1939 (Tr. p. 2633); that on the morning of January 30, 1939, he met Ely in the front room of the office at the plant and Ely told him that Lloyd said there wasn't any more work. Gordon Hammond then told him they would go load some cotton. Hammond went out the front door across to where they were loading, but when he got over there Ely didn't follow him (Tr. p.

2634) but left the plant. (Tr. p. 1360). He has never applied for work since that time (Tr. p. 2635).

The following facts bear upon the credibility of E. C. Ely, who is known as "Fat" Ely (Tr. p. 1882). On cross-examination he testified that he first went to a union meeting during January, 1939 (Tr. p. 1373), but testified that he had been in the same house where union meetings were held before that time. When he was asked on what occasions he had been in the same house where union meetings were held he testified positively that he had never been to a gathering of union members before January, 1939 (Tr. pp. 1373, 1374).

However, Griffin testified that E. C. (Fat) Ely attended a regular union meeting on November 15th or 16th, 1938 (Tr. p. 1344), and Martin likewise testified that E. C. Ely was present at the union meeting on November 16, 1938 (Tr. p. 556).

When Griffin's testimony was called to E. C. Ely's attention later in the hearing he admitted that as early as November 16, 1938, he had attended social gatherings of union members (Tr. p. 1901) and testified that Griffin may have thought he was a member because he went around with union men (Tr. p. 1900).

Ely testified that he went around with Johnston and his brother, Elgin Ely, long before he went to the Bakersfield meeting (Tr. p. 1375), that the three of them were living together during the fall of 1938 and that Gordon Hammond had been to his house where the three were living (Tr. p. 1379). All of

that time after October, 1938, Ely had been working steadily at the Boswell plant.

The respondents at the time of the hearing objected to testimony by Eugene Clark Ely regarding his alleged conversation with Rube Lloyd on the morning of January 30, 1939, on the ground that such testimony was hearsay; that it was not binding on the respondents, and no authority had been shown for Rube Lloyd to speak for the respondents. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (Tr. p. 1359). The respondents, and each of them, hereby except to said ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 94.

Exception No. 95.

The respondents, and each of them hereby, except to the portion of Finding No. 83, page 41 of the Intermediate Report, wherein it is stated that Eugene Clark Ely "was discharged on January 30, 1939, because of his membership in Local 21798 and because of his union activities" upon the ground that such statement is not supported by the evidence and is contrary to the evidence.

The evidence shows, as hereinabove stated in Exception No. 94 to Finding No. 82, that Ely was not discharged on January 30, 1939, but on the contrary he was offered work loading cotton on the morning of that day by Mr. Gordon Hammond, but he did not accept the offer, and left the plant of his own accord

and never applied to the Company for work after that time.

The respondents, and each of them, specify the foregoing as Exception No. 95.

Exception No. 96.

Respondents, and each of them, hereby except to Finding No. 84, page 41 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence.

Respondents, and each of them, hereby specify the foregoing as Exception No. 96.

Exception No. 97.

The respondents, and each of them, hereby except to the omission by the Trial Examiner from the Intermediate Report of any statement whatsoever concerning the employment records of E. J. (George) Andrade, H. N. Wingo, and L. A. Spear.

The evidence, and particularly the employment record of each of these men, shows conclusively that each of them, during the times that he was employed by respondent Boswell Company, was engaged almost entirely in the performance of seasonal work in and about the plant in connection with the normal seasonal operations of the plant.

E. J. (George) Andrade first started to work for the Boswell Company in September 1933, sewing cotton planting seed at 30c an hour. Upon the occasion of his first employment he worked only about four weeks and either quit or was laid off. He was next reemployed by the Company in September 1934, as gin helper (Tr. p. 1100), and worked at this job

until the latter part of December 1934. He testified that, in general, since that time in 1934 he worked when the gins or the mill operated, and was laid off in between those periods (Tr. p. 1101).

He testified that in 1938 he worked in the oil mill until it shut down the latter part of September 1938, and while working in the mill he was sewing sacks. When the mill closed he was laid off, but was re-employed as clean up man at the gins about October 6, 1938, at forty cents per hour, and continued at this job until November 18, 1938. (Tr. p. 1102).

The social security record of Andrade (Board's Exhibit No. 3) also confirms the fact that Andrade worked only when the gins or the mill operated, as it shows that he worked until the mill closed in March 1938, that he commenced work again when the mill opened May 3, 1938, and was laid off when it closed again May 17, 1938; that he went to work again when the mill opened July 1, 1938, and continued to work until it closed again on September 27, 1938 (tr. 2551), and that his next employment was during the week ending October 13, 1938, which, as he testified, was as clean up man in the gins.

He also admitted upon cross-examination that after he went to work in the gins about October 6, 1938, as clean up man, the clean up of the gins did not take all of his time and, in addition to doing this type of work, he also unloaded cotton and helped out wherever there was anything to be done, and did odd jobs around the plant, and that this odd job work continued until he left the plant on November 18 (tr. 1125).

The undisputed evidence shows that he never applied for work at the Boswell Company since November 18, 1938 (Tr. pp. 1118 and 2636).

Contrary to the statement which is made throughout the report that it was the practice of the Company to recall employees following layoffs, Andrade admitted that when he was reemployed in July 1938 after having previously been laid off when the mill closed in May 1938, he went to the plant and applied for work and was hired (Tr. p. 1121). He also admitted that after he was laid off when the mill closed September 27, 1938, he, of his own volition, went to the plant about October 5, 1938, and applied for work (Tr. p. 1124).

He also admitted upon cross-examination that during the last period of his employment, subsequent to October 6, 1938, as clean up man, the clean up of the gins did not take all of his time and, in addition to doing said type of work, he also unloaded cotton and helped out wherever there was anything to be done, and did odd jobs around the plant, and that such odd jobs continued until he left the plant on November 18, 1938 (Tr. p. 1125). This fact indicates, and the evidence shows, that the work on which he as well as other employees were engaged about this time was running out.

H. N. Wingo was first employed by the Boswell Company in November 1937, at which time he worked feeding suction at the gin (Tr. p. 990). He continued on this job for two weeks and then went to work as press helper tying out cotton. He con-

tinued doing that type of work for some six or eight weeks. Then he helped turn some hot seed that was piled up in the warehouse one or two nights, and thereafter helped haul some of the hot seed to the oil mill for three or four nights. He was then put to work in the seed house about the middle of January and worked there until the mill shut down in March 1938. (Tr. p. 991-2). He was then off only a few days when he started to work around where some pumps were being set out on the levee. After he worked at this job one or two days he worked around the plant in Corcoran hoeing weeds and cleaning up. He testified this was in April 1938 and he was then laid off at the plant and got a job as helper out in 749 District (Tr. pp. 992-3). While working on this last mentioned job, which continued from sometime in April until about June 9, 1938, he was paid by Tulare Lake Land Company and was not working for the Boswell Company (Tr. p. 994). He testified that about the first of July 1938, he was reemployed by the Boswell Company in the seed house at the oil mill, and continued on that job until sometime in the latter part of September 1938, when he was laid off. (Tr. pp. 995; 1014).

The undisputed and stipulated evidence in this case shows that the oil mill was closed down September 27, 1938 (tr. 2551).

Upon cross-examination, Wingo was shown his Social Security Record (Board's Exhibit No. 3), which showed conclusively that he was not on the payroll between the week ending March 24, 1938,

and the week commencing about July 1, 1938. He admitted he was laid off by the Boswell Company about March 24, 1938 (tr. 1010), but insisted, notwithstanding the record, that he went back and worked a few days after the mill shut down the latter part of March (tr. 1011), and that after the mill shut down he was only off two or three days until he was employed for a short time, and then laid off again, and that he helped set pumps and hoed weeds around the warehouse during these few days.

The lack of memory of this witness is shown by the fact that both on direct and cross-examination he testified that he made application to join the Union on September 2, 1938. However, he did not remember what union meetings were held, except he stated he attended one about November 16. He did not remember if this was the first meeting he attended, and did not even remember the date he was initiated (tr. 1019). Neither did he remember when he received his union button, nor how many other employees of the Boswell Company were present at the union meeting which he did attend (tr. 1020).

L. A. Spear was first employed by the Boswell Company in July 1928, as a ginner (Tr. pp. 852-3). He testified that the first time he was laid off for more than a month was in 1931, at which time he was laid off for a period of three months (Tr. p. 853). The second time he was laid off for over a month was in 1932, when he was laid off for three

months (Tr. p. 854). He testified that the third time he was laid off for a period of in excess of one month was in the spring of 1933. He stated at that time conditions didn't look good and he stayed away for about 18 months (Tr. p. 854). Spear stated that he was reemployed by the Company in September 1934 (Tr. p. 854).

According to Spear, the next time he was off more than one month was in 1936, at which time he was laid off for a period of two or three months (Tr. p. 854). In February of 1938 he was again laid off for two or three months until about May or June, when he was employed again (Tr. pp. 855 and 944). When he again went to work he did repair work and ginning (Tr. p. 855).

Spear testified that as early as about October 10, 1938, he realized that the work was running short. At that time he talked with Gordon Hammond and was told by Hammond that there was not enough work for the men employed, unless the mill started. Spear testified that at the time of this conference it was his opinion that if he had been foreman there were men on the payroll that were not needed (Tr. p. 940). He testified that the Company was going to lay off these men unless the mill was started (Tr. p. 940). He also testified that the 1938-39 season was a very short season, that there was a decrease in cotton acreage and there was no night crew on the gins (Tr. p. 941). He also testified that the work at the gins was running out about November 18, (Tr. p. 942).

All of the foregoing men left the plant on November 18, and none of them applied for work since that time. Although these men did no work after November 18, Spear was carried on the payroll and received his pay until December 5, 1938, at which time the gin on which he had been working closed down (Boswell Exhibit No. 19 and Board's Exhibit No. 3); Wingo was carried on the payroll and received his pay until December 3, 1938, at which time the gin on which he had been working closed down (Boswell Exhibit No. 18 and Board's Exhibit No. 3); and Andrade was carried on the payroll and received his pay until November 26, 1938, at which time the work on the planting seed which he had previously been doing was completed (Boswell Exhibit No. 14 and Board's Exhibit No. 3).

Respondents, and each of them, specify all the foregoing as Exception No. 97.

Exception No. 98.

The respondents, and each of them, hereby except to the whole of Finding No. 85, pages 41, 42 and 43, of the Intermediate Report, except the statements with respect to the letters which were mailed to certain of the men as therein mentioned, upon the ground that none of such statements are supported by the evidence, and that, with this exception, all the statements therein contained are contrary to the evidence, as is particularly set forth in the exceptions to the prior Findings contained in the Intermediate Report, which exceptions are hereby in-

corporated with the same effect as if stated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 98.

Exception No. 99.

The respondents, and each of them, hereby except to the whole of Finding No. 86, page 43 of the Intermediate Report, upon the ground that the whole of said Finding is contrary to and unsupported by the evidence, as is particularly set forth in the exceptions to the prior Findings, contained in the Intermediate Report, which exceptions are hereby incorporated with the same effect as if stated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 99.

Exception No. 100.

The respondents, and each of them, hereby except to the whole of Finding No. 87, page 43 of the Intermediate Report, upon the ground that the whole of said Finding is unsupported by the evidence and is contrary to the evidence, as is particularly set forth in the exception to the prior Findings contained in the Intermediate Report, which exceptions are incorporated herein with the same effect as if stated herein in full. Respondents, and each of them, further except to said Finding No. 87, upon the ground that the statement contained in said Finding that Powell was discharged on November 28, 1938, is inconsistent with the statement in Finding No. 86,

where it is stated that he was discharged on November 26, 1938.

Respondents, and each of them, specify the foregoing as Exception No. 100.

Exception No. 101.

The respondents, and each of them, hereby except to the whole of Finding No. 88, page 43 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence, as is particularly set forth in the exceptions to the prior Findings contained in the Intermediate Report, which exceptions are incorporated herein with the same effect as if restated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 101.

Exception No. 102.

The respondents, and each of them hereby, except to the statement contained in Finding No. 90, page 44 of the Intermediate Report, that "Joe Briley was recalled to work a few days after November 18, 1938" upon the ground that such statement is not supported by the evidence and is contrary to the evidence. The undisputed testimony of Gordon Hammond showed that Joe Briley came back November 19, 1938 and asked Gordon Hammond for work. He was put to work and has worked since that time when work was available (Tr. p. 2630). There was no evidence whatever that Joe Briley was ever recalled to work after November 18, 1938 or at any other time.

Respondents, and each of them, specify the foregoing as Exception No. 102.

Exception No. 103.

Respondents, and each of them, hereby except to all portions of the findings contained in said Intermediate Report relating to the occurrences at any of the meetings of the Independent, and relating to any communications between the Independent or members thereof and persons other than the respondents, and relating to any acts by the Independent or any members thereof, upon the ground that said findings are based solely upon hearsay and incompetent evidence which is in no way binding upon respondents, or any of them, and all of which evidence was erroneously introduced over the objections of respondents.

Respondents at the hearing duly objected to the introduction of all such evidence upon the foregoing grounds and the trial examiner erroneously overruled said objections to which respondents and each of them duly excepted and do hereby except.

Respondents, and each of them, hereby specify the foregoing as Exception No. 103.

Exception No. 104.

The respondents, and each of them, hereby except to Finding No. 91, page 45 of the Intermediate Report upon the ground that certain of the statements therein contained and herein after referred to are not supported by the evidence and are contrary to the evidence.

The statement that Rube Lloyd, Clyde Sitton and the unidentified third person came to Robinson's office on the morning of November 18, and "advised him that a number of respondent's employees had decided to organize a company union" is unsupported by and contrary to the evidence.

The undisputed testimony shows that when these three men came to Mr. Robinson on the morning of November 18, they asked him to advise them as to what he thought they should do in connection with the disturbance that had taken place, and he told them he was not in a position to advise them and they would have to seek other advice. They did not represent themselves to him at that time as a committee appointed by the non-union men (2146). The evidence does not show that these three men discussed the matter of organizing a union, or even mentioned the same, at this time. The evidence merely shows, as above stated, that they asked Mr. Robinson's advice regarding the disturbance of that morning and he told them he could not advise them and they would have to seek advice elsewhere.

The statement in said Finding that, "The Committee left and went to the office of the district attorney of Kings County seeking information as to the formation of an independent union" is contrary to the evidence. Mr. Robinson testified that at the time these three men called on him on the morning of November 18 they did not represent themselves as a committee of the non-union men at that time. The evidence does not show that these three men

composed the committee which subsequently went to see the District Attorney. On the contrary, the evidence shows that the committee which went to see the District Attorney, later in the day was composed of about five men, the names of whom the District Attorney did not recall (Tr. 172).

The respondents, and each of them, specify the foregoing as Exception No. 104.

Exception No. 105.

The respondents, and each of them, hereby except to Finding No. 92, page 45 of the Intermediate Report, upon the ground that said Finding does not fully or accurately set forth the evidence with respect to certain of the matters therein mentioned.

The undisputed testimony of District Attorney Roger R. Walch shows that on the morning of November 18, 1938, a group of four or five men came to his office to see him. They said they were employees working down at the Boswell cotton gin and that there had been a little misunderstanding that had arisen at the Boswell plant that morning (Tr. 172). He did not know any of these men personally and did not recall their names or keep any record of the matter.

They asked him what he knew about the Wagner Act and the possibility of the local employees forming an employees' union at the Boswell plant. He told them he was not familiar with the Wagner Act, but it was his understanding that employees of any organization could form their own employees' union if it was the desire of the majority of the employees

to do so, or could select their own bargaining agency (tr. 173).

They stated to him that they represented practically the unanimous feeling of the employees of the Boswell Company; that they did not feel as though they desired to have an outside union come in; that there had been talk of the American Federation of Labor coming into the plant and they felt they would rather have their own bargaining agency. They stated there was some dissension—seven or eight men down there had been talking up an American Federation of Labor affiliate. They asked him if he would represent them in the organizing of a union, and he told them No, that as District Attorney he would take no part in a private capacity for any person in connection with labor matters because he had to be unfettered when he was called upon to rule on labor questions (tr. 174).

He told them there were two local unions of employees that had been organized recently in the county, and gave them the names, one being the Lucerne Creamery and the other the Caminol. He suggested that probably the attorney in the county who knew most about the Wagner Act was Attorney Clark Lament (Clement) from Lemoore, and suggested if they were thinking of forming their union that he would be a good attorney to see. The District Attorney told them if they wished he would call up the Caminol and see if there was anybody there who was a member of the Employees' organization who could give them information with re-

spect to how much it cost, how it worked, and how the organization was perfected, and when they asked that he do this he called the chief bookkeeper at the Caminol, who stated he would see some of the boys and when the Committee came down, if there were any there that could give them any help they would be glad to do so.

The District Attorney asked this group of men that came to see him if the Boswell management had anything to do with this, and they replied, No, that the management did not even know they were coming up to consult with him, that they were expressing the sentiment of the employees. The District Attorney then asked them why they wanted their own and not an outside union, and they said they didn't feel like paying tribute to an outside organization; that Boswells had always treated them right and their wages were satisfactory, and they felt that inside of their own organization they could do better than have an outside bargaining power (tr. p. 175-6).

This group of men also asked the District Attorney if he had heard about the trouble down at the Boswell plant, and he said he had (tr. 176). They told him one or two men had been talking up the American Federation of Labor affiliate and they had gotten tired of the talk and didn't want to be bothered with them, and they had asked them to leave the premises. He asked if any force had been used in the ejectment of the men, and they replied nobody was injured and no force of any consequence

was used. He then asked them if they had evicted them from the premises on the authority of the Boswell people, and they said No. He then instructed them that they had no power or authority to eject anyone from anyone else's property and didn't want to hear any more of that kind of thing going on; that he didn't think it amounted to a great deal; that no complaint had been made at that time by any of the men or individuals who later claimed they had been evicted, and that, so far as he was concerned, no formal complaint had come into his office, but he would not countenance the use of force by anybody (tr. 177).

Respondents, and each of them, specify the foregoing as Exception No. 105.

Exception No. 106.

The respondents, and each of them, hereby except to Finding No. 93, page 46 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence and are contrary to the evidence and do not fully or accurately state the evidence with respect to the matters therein referred to.

Mr. Louis T. Robinson testified that when Lloyd, Sitton, and Busby called on him the afternoon of November 18, they told him that a committee had gone to see the District Attorney and the District Attorney had told them that he did not think anything had happened that would be cause for action by his office. They also told Mr. Robinson that they discussed the matter with the District Attorney and

asked him about forming an employees' association, and the District Attorney told them that such associations had been formed by the employees of Caminol Company and the Lucerne Creamery, and recommended that they investigate it at those places (tr. 2151).

This was the first knowledge Mr. Robinson had respecting the fact that the non-union men had appointed a committee, and that the committee had gone to the District Attorney for instructions as to the best method of procedure for them to follow (tr. 2151-2).

The respondents, and each of them, specify the foregoing as Exception No. 106.

Exception No. 107.

Respondents, and each of them, hereby except to Finding No. 94, pages 46 and 47 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter specified are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and are incomplete statements of the evidence.

All portions of said Finding relating to the occurrences at the meeting of employees on November 18th are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents. Respondents duly objected to the introduction of such testimony upon the grounds that it was incompetent, irrelevant and immaterial, that it was hearsay and not binding upon respon-

dents and that no authority was shown from any of the respondents to any of the persons present at said meeting to speak for or on behalf of any of said respondents. Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which rulings respondents and each of them duly excepted and do hereby except. (Tr. p. 1883).

There is no evidence whatsoever to support the statement that "the committee arranged for a meeting to be held that evening in th office of the Boswell Company's plant at Corcoran, California". It was not shown who made these arrangements, but the evidence did show conclusively that the management of the Boswell Company did not have anything to do therewith.

It is also stated in said Finding that "a number of the employees together with those in supervisory capacity attended that meeting," and "the record shows that Samuel Brenes, head bookkeeper in the office of respondent company at Corcoran, and a number of other supervisory employees attended that meeting; including Busby, Yankee Roberson, Rube Lloyd and Kelley Hammond." These statements with respect to alleged supervisory employees are mere conclusions of the Trial Examiner, and are not supported by any evidence, and are contrary to the evidence. The evidence affirmatively establishes that none of the employees who attended this meeting were in any wise authorized to speak or act for the Boswell Company, or to in any wise bind

the Company, and that none of them had any authority to hire or fire or to speak for the Company with respect to hours, wages, or conditions of employment.

Respondents incorporate herein with the same effect as though set herein in full Exception No. 54.

It is also stated in said Finding that "minutes were kept of the meeting and offered as Board Exhibit No. 19." This statement is not supported by the evidence, and is contrary to the evidence, which showed that Board's Exhibit No. 19 was merely a list of names, which was a part of the minutes of the first meeting held on the evening of November 18, 1938, and the complete minutes of said meeting were not introduced into evidence.

Eugene Clark Ely, who was called as a witness by the Board, testified, on direct examination, that all but one or two of the employees attended the meeting on the night of November 18, 1938 (Tr. 1883), and, on cross examination, testified that about 70 persons attended this meeting; that practically everybody then employed at the Corcoran plant joined the Independent. The evidence shows conclusively that a large majority of the employees who were working at the plant on November 18, favored the organization of an independent union.

Lonie Robinson testified that the group of employees who came to see him the afternoon of November 18, 1938, informed him that they had been told by the District Attorney that employees' unions had been formed at the Caminal Company and at

the Lucerne Creamery. He stated that that was the first time he had heard about those employees' organizations. He further testified that his purpose in requesting the Los Angeles office of the Boswell Company to obtain any information they could regarding company unions and to give him the benefit of their ideas in that connection, as mentioned in the letter of November 18, was that he thought the employees in the Corcoran plant might form one of those associations and that the company might be called on to recognize it, and he believed he should be giving the matter some thought. (Tr. pgs. 2152, 2153). He testified that he wanted to have the benefit of any information Mr. Boswell could obtain so that he would be better qualified to make any such decisions in the event they were called for. Mr. Robinson also testified that he did not have anything whatsoever to do, nor to his knowledge did any other representative of the Boswell Company have anything to do with the organization of the employees' association (Tr. p. 2154).

Furthermore, the portion of said finding purported to quote a portion of the letter therein referred to is not in fact a correct quotation. Portions thereof are removed from their context and omitted without any indication thereof.

The respondents, and each of them, specify the foregoing as Exception No. 107.

Exception No. 108.

Respondents, Associated Farmers and Corcoran Telephone Exchange, hereby except to the portion

of Finding No. 95, relating to a conversation between Gordon Hammond, Rube Lloyd and E. M. Roberson, upon the ground that said portion of said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of said respondents. Said respondents duly interposed objections to the questions calling for such testimony upon the ground that said questions called for hearsay and incompetent evidence and the Trial Examiner erroneously overruled said objections to which said respondents excepted and do hereby except (Tr. p. 2695, line 19 to p. 2696, line 1). No evidence was introduced which showed or tended to show any authority conferred by respondents, or either of them, upon any of the persons mentioned in said paragraph to act or speak for or on behalf of said respondents, or either of them.

Respondents, Associated Farmers and Corcoran Telephone Exchange, hereby specify the foregoing as Exception No. 108.

Exception No. 109.

Respondents, and each of them, hereby except to Finding No. 95, page 46 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are contrary to and unsupported by the evidence and are incomplete and inaccurate with respect to the matters therein referred to.

Gordon Hammond testified (and his testimony was not denied) that on the morning of November 18 he left for Los Angeles about 8:30 A. M. and

did not return to the plant until about 7:00 o'clock that evening. When he returned to the plant that evening, he made up the time cards and weighed some cotton. He did not know the employees intended to meet in the office that evening and they had not asked his permission, and he was not present at, and did not take any part in, the meeting (tr. 2568). He further testified that after he had made out about half of the time cards, he was called out to the scale house to weigh some cotton. Before leaving his office to weigh the cotton he talked with E. M. Roberson and Rube Lloyd, who happened to be present (tr. 2695). He asked them what the crowd was doing in the front office, and they told him there had been some difficulty among the employees that day out in the yard, and the men had come there that evening for the purpose of letting the Company know they were satisfied with their work, the way it was managed, and conditions in every way (tr. 2696). They told him what had taken place that morning, and that there seemed to be some misunderstanding among the employees that morning (tr. 2697). They also told him about Spear having been taken to the office, and Mr. Louis T. Robinson telling all of the men to return to work, but that later some of the Union men had left. Mr. Hammond told Lloyd and Roberson that was the worst thing they could have done, that they shouldn't have done that (tr. 2701).

The evidence showed that the meeting of employees referred to in said Finding was held in the lobby

of the administration building and not in the portion of the building in which Gordon Hammond's office is located. The administration building was described as a building containing eight or ten rooms, including the lobby where the bulletin board is located (tr. pgs. 1969 to 1971).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 109.

Exception No. 110.

Respondents, and each of them, hereby except to Finding No. 96, pages 47 and 48 of the Intermediate Report, upon the ground that certain portions thereof hereinafter specified are contrary to and unsupported by the evidence, are based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and are incorrect and incomplete statements of the evidence.

All portions of said Finding relating to occurrences at the meeting of employees held on November 28, 1938, are based solely upon hearsay and incompetent evidence erroneously introduced over respondents' objection. Respondents duly interposed objections to the introduction of said testimony upon the ground that it was incompetent, irrelevant and immaterial, hearsay as to the respondents and not binding upon them, no authority having been shown from any of the respondents to any of said persons. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which respondents duly excepted and do hereby except (Tr. p. 1883, ll. 13 to 25, p. 1887, ll. 17 to 20).

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The statement that O. W. Busby is head mechanic in the machine shop and is a supervisory employee, and the further statement that Hubbard, Brenes, and Roberson were the only ones nominated for the respective positions to which they were elected, is contrary to the evidence.

The evidence affirmatively establishes that the meeting held by the employees on November 28, 1938, was the first real organization meeting of the employees' association, as the employees who had previously met on the evening of November 18, 1938, just discussed the possibility of organizing an employees' union of their own (Tr. p. 1920). The evidence also shows without dispute that the organization meeting of November 28, 1938, was held under the guidance and instructions of Attorney Clark Clement, of Lemoore, California, who was not connected in any way with any of the respondents and was employed by the members of the association for the purpose of advising them relative to the formation of the association, and to prepare the constitution and bylaws. Eugene Clark Ely, who was a witness for the Board, testified that he became a member of the Independent and continued to be a member for some time but later joined Prior's union. He testified that the attorney from Lemoore was present at the meeting and made quite a long speech, although he did not recall all that the attorney said (Tr. p. 1888).

The undisputed evidence also shows that the Boswell Company never made any financial contribution whatsoever to the Independent (Tr. p. 1943); that all finances of the Independent were and are derived from members through initiation fees and monthly membership dues (Tr. p. 1942); that the constitution and bylaws adopted at the meeting of November 28 (Board's Exhibit No. 18) were prepared by Attorney Clement, who was paid for his services with funds of the Association, and that the officers of the Association were elected by secret ballot (Tr. p. 1970).

It is stated in the above mentioned finding that Hubbard, Brenes, and Roberson were the only ones nominated for the respective positions to which they were elected. The undisputed evidence shows however that there were two candidates for the office of treasurer to which Mr. Brenes was ultimately elected (Tr. p. 1971) by secret ballot.

The undisputed evidence also shows that 77 employees attended the organization meeting of November 28, 1938 (Tr. p. 1943) and that subsequent to that date and prior to about May 1, 1939, 23 additional members joined the association (Tr. p. 1944-5).

The respondents, and each of them, specify the foregoing as Exception No. 110.

Exception No. 111.

Respondents, and each of them, hereby except to the whole of Finding No. 97, page 48 of the Intermediate Report, upon the ground that said Finding

is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents and upon the ground that said Finding is unsupported by any competent and credible evidence, and upon the further ground that there was no authority shown from respondent Boswell Company to either Roberson or Tom Hammond to in anywise act or speak for it with respect to any of the matters or alleged conversations referred to in said Finding, or to bind it in any way.

The respondents at the time of the hearing objected to the introduction of testimony by Eugene Clark Ely with respect to what occurred at the meeting of the employees held on the evening of November 18, 1938, upon the ground that such testimony was incompetent, irrelevant, and immaterial, and hearsay as to the respondents, not binding upon them, no authority having been shown from any of the respondents to any of the persons present at that meeting to speak for them with regard to any matter under investigation in this proceeding. The trial examiner erroneously overruled this objection and an exception was duly taken thereto. It was later stipulated that the same objection would run to this entire line of testimony (Tr. p. 1883). When the witness was asked to state what occurred during the second meeting held November 28, 1938, it was stipulated that the same objection would apply. These objections were erroneously overruled by the Trial Examiner and exceptions were duly taken thereto (Tr. p. 1887). Thereafter the wit-

ness testified, among other things, that he received a card from Roberson notifying him of the meeting and he testified to the alleged conversation with Tom Hammond mentioned in the above finding.

The respondents, and each of them, hereby except to the above mentioned rulings of the Trial Examiner, and each of them, upon all of the grounds above stated which were urged in support of the objections.

The respondents, and each of them, specify all of the foregoing as Exception No. 111.

Exception No. 112.

Respondents, and each of them, hereby except to Finding No. 98, page 48 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents, and upon the ground that said Finding is unsupported by any competent and substantial evidence.

Respondents duly interposed objections to the questions calling for the testimony upon which said Finding is based, upon the ground that said questions called for hearsay and incompetent testimony which was not binding upon respondents. The Trial Examiner erroneously overruled said objections and erroneously permitted the introduction of said testimony to which respondents duly excepted (Tr. p. 1883, lines 13 to 25, p. 1887, lines 17 to 20).

Respondents incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The evidence affirmatively shows that none of the men mentioned in said Finding had any authority from respondents, or any of them, to act for or on behalf of respondents, or any of them, in respect to any of the matters referred to in said Findings, or any other matters under investigation in this proceeding.

The statement in said Finding that Busby, Hubbard, Tom Hammond, Joe Hammond, Brenes, Wiloughby, and Lloyd are all supervisory employees, is a mere conclusion of the Trial Examiner and is not supported by the evidence, and is contrary to the evidence.

The respondents, and each of them, specify the foregoing as Exception No. 112.

Exception No. 113.

Respondents, and each of them, hereby except to Finding No. 99, page 48 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the competent evidence and is based solely upon hearsay and incompetent testimony erroneously introduced over the objection of respondents.

Respondents duly interposed objections to the questions calling for the testimony upon which said Finding is based. Said objections were predicated upon the ground that said questions called for hearsay and incompetent evidence. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony to which respon-

dents duly excepted (Tr. p. 1919, lines 19 to 23, p. 1922, line 21, to p. 1923, line 17).

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

The evidence fails to show any authority conferred by respondents, or any of them, upon Tom Hammond, Joe Hammond, Hubbard or McKeever, or any of them, or any other employee, except Louis Robinson and Gordon Hammond, to speak or act for or on behalf of respondent Boswell Company, or any of the respondents, in any of the matters involved in this proceeding. The evidence shows that the only persons authorized to speak for respondent Boswell Company were Gordon Hammond or Louis T. Robinson, and that neither of said persons was a member, or at any time attended any of the meetings of the Independent, or participated in the proceedings of the Independent, in any manner or to any extent whatsoever.

Furthermore, the evidence does not show that any alleged supervisory employee or employees of the Tipton plant were members of the Independent.

The evidence further shows, without dispute or contradiction, that the Independent had a number of committees—membership, social, nominating, and financing committee in addition to Labor Relations Committee (Tr. p. 1937). The undisputed evidence also shows that at the election which was held April 5, 1939, Bill Nichols, who is a carpenter employed at an hourly rate, was elected Vice President (Tr.

p. 1932); William Overstreet, who works at the gin in the Tipton plant, but comes to Corcoran during the slack season in the summer, was elected to the Labor Relations Committee (Tr. p. 1934); Bruce Clark, who is an electrician employed at the Corcoran plant, and Sam Robinson, who is employed as a ginner at the Corcoran plant during the ginning season, but does miscellaneous work around the plant during the slack season, were also both elected on the Labor Relations Committee.

Respondents, and each of them, specify the foregoing as Exception No. 113.

Exception No. 114.

The respondents, and each of them, hereby except to Finding No. 100, pages 48 and 49 of the Intermediate Report, upon the ground that certain of the statements therein contained which are hereinafter referred to are not supported by the evidence, and upon the further ground that the evidence with respect to certain of the matters therein referred to is not fully or accurately stated in the respects hereinafter mentioned.

The evidence shows that on November 29, 1938, the Independent wrote a letter to the J. G. Boswell Company at Los Angeles, notifying the company of the organization of the independent and stating the names of its officers (Board's Exhibit No. 27), as follows:

“Corcoran, California

November 29, 1938

“J. G. Boswell Company
354 South Spring Street
Los Angeles, California

“Gentlemen:

“Please take notice that at 7:00 P. M. November 28, 1938, at the American Legion Hall in Corcoran, California, seventy-eight employees of the J. G. Boswell Company at Corcoran organized themselves into an employees’ association under the National Labor Relations Act and unanimously adopted a constitution and by-laws by which they are to be governed. This constitutes about 95% of the Corcoran employees.

“The following officers were elected and constitute the governing board of the association:

President—J. W. Hubbard

Vice President—O. W. Busby

Secretary—E. M. Roberson

Treasurer—S. F. Brenes

“Labor Relations Board

R. B. Lloyd

W. F. Willoughby

H. G. McKeever

Very truly yours,

J. G. BOSWELL CO. EMPLOY-
EES’ ASSN.

J. W. HUBBARD, President

E. M. ROBERSON, Secretary”

Brenes testified the writing and sending of the above letter was authorized at a meeting of the Governing Board of the Independent on November 29, 1938, and a copy thereof was set forth in the minutes (Tr. 1946).

The evidence also shows that at a special meeting of the Governing Board of the Independent, held on January 11, 1939, the Board authorized and directed that a letter be forwarded to the National Labor Relations Board at Los Angeles, California (Tr. p. 1949). A copy of said letter was set forth in the minutes of such meeting (Tr. p. 1949). Said letter was read into evidence, (Tr. p. 1954). Said letter read as follows:

“Corcoran, California

“January 11, 1939

“National Labor Relations Board

“Twenty-First Region

“610 South Main Street

“Los Angeles, California

“Gentlemen:

“We understand that the American Federation of Labor is pretending to represent the employees of the J. G. Boswell Company of Corcoran and Tipton, California.

“Please be advised that more than 95 per cent of the employees are members of the J. G. Boswell Company Employees' Association of Corcoran and Tipton, which was organized November 28, 1938, under the National Labor Re-

lations Act, with constitution and by-laws which you are invited to inspect.

“We want no interference on the part of the American Federation of Labor. Our members are of the unanimous opinion that their purposes can best be served through the local organization without outside interference.

“Very truly yours,

“J. G. BOSWELL COMPANY
EMPLOYEES’

“ASSOCIATION OF
CORCORAN AND TIPTON

“Governing Board—”

The portion of the letter dated April 15, 1939, quoted in said Finding omits the first part of said letter which states that

“At the annual meeting of the J. G. Boswell Company Employees’ Association on April 5, 1939, the question was raised . . .” (Board Exhibit No. 28).

Members of the Independent testified that although the Independent never demanded or insisted that the Company enter into a closed shop agreement, or other working agreement with the Independent, the Independent did put the Company on notice that it represented a majority of the employees, and that the Independent was looking after the interests of its members, and was claiming the right to bargain for them should occasion arise. All of the evidence showed that the Company never at any time denied the Independent the right to bargain on

behalf of its members, or the right to represent them in any way.

The portion of said Finding wherein it is stated that the letter therein quoted "is a mere gesture of an attempt to bargain on behalf of the Independent" is entirely unwarranted and unsupported by the evidence.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 114.

Exception No. 115.

Respondents, and each of them, hereby except to the whole of Finding No. 101, pages 49 and 50 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by evidence and upon the ground that no authority is shown from respondents, or any of them, to any of the men named in said Finding to speak or act for or on behalf of any of the respondents, and upon the ground that said finding is based solely upon hearsay and incompetent testimony.

Respondents hereby incorporate herein and restate Exception No. 54 with the same effect as if fully set forth herein.

Mr. Louis T. Robinson testified that no one in Corcoran, other than himself and Gordon Hammond, has authority to employ or discharge any employee (Tr. p. 2165), and that they are the only ones at the Corcoran plant who are authorized to speak for the Company with respect to any employment matters (Tr. p. 2394). Also that they are the only ones in the Corcoran plant who are

authorized to speak for the company with respect to any matter concerning its business (Tr. p. 2395), and that there is no one else at the Corcoran plant, other than himself and Mr. Hammond, who has any authority at all to bind the Company (Tr. p. 2396); that there is no one at the Corcoran plant, other than himself and Mr. Gordon Hammond, who has authority from the Boswell Company to employ or discharge any of the employees. That this authority originally came from the head office and has been in practice there for a period of years (Tr. pp. 2396-7). This testimony was not denied.

It is stated in said Finding that "these same individuals" (referring to Busby, Hubbard, Tom Hammond, Brenes, Willoughby, Lloyd, and Joe Hammond) are officers and direct the activities of the Independent. The evidence shows that this is a gross misstatement of the facts, as the evidence showed without dispute that neither Tom Hammond nor Joe Hammond were at any time officers of the Independent, and there is no evidence whatever which would even indicate that they, or either of them, directed the activities of the Independent. The evidence also showed without dispute that, although, at the organization meeting of November 28, 1938, Hubbard, Busby, and Brenes were elected as officers and Lloyd and Willoughby were elected on the Labor Relations Committee (Tr. pp. 1923-31), they served only about four months, and on April 5, 1939 an entirely new set of officers, as well as members of the Labor Relations Committee, were

elected, with the exception of Brenes, who was retained as Treasurer, and Willoughby, who was elected President (Tr. pp. 1932-35).

The evidence also shows without dispute that practically all of the officers and all of the men who were elected to serve on the Labor Relations Committee at the election of April 5, 1939, were men who worked at the plant on an hourly wage basis and were representative of the rank and file of the membership of the Independent (Tr. pp. 1932-5).

It is also stated in said Finding, among other things,

“that the respondent Boswell Company has interfered with, dominated and aided in the formation and administration”

of the Independent. There was absolutely no evidence to support such a finding.

The respondents, and each of them, specify all of the foregoing as Exception No. 115.

Exception No. 116.

Respondents, and each of them, hereby except to the whole of Finding No. 102 upon the grounds that said Finding is irrelevant to any of the issues in this case, that the matters therein stated are of no probative value in this case, that said Finding is based solely upon hearsay testimony and that no authority was shown from any of the respondents to any of the parties mentioned in said Finding to act or speak for or on behalf of any of the respondents in regard to any of the matters mentioned therein, or in regard to any of the matters involved in this

proceeding, and the ground that said finding does not accurately state the evidence relating to the matters therein mentioned.

Respondents duly interposed objections to the questions calling for the testimony of Prior in relation to the matters therein stated and moved to strike the portion of said testimony, upon the ground that said questions called for hearsay and incompetent evidence which was not binding upon respondents or any of them. The Trial Examiner erroneously overruled said objections and permitted the introduction of said testimony and denied said motions to strike to which respondents duly excepted (Tr. p. 148, lines 5 to 8; p. 149, lines 4 to 12; p. 150, lines 4 to 6; p. 151, lines 4 to 7; p. 152, lines 3 to 6).

It is stated in said Finding, among other things, that on January 21, 1939, Prior and Ely had a conference with the District Attorney regarding the law of California as to the use of pickets and the number that might be stationed at the Boswell plant. There was absolutely no evidence whatever to support parts of such statement. The testimony shows that Prior told the District Attorney he and Ely had called on him for a conference to determine the nature of the picketing ordinances of Kings County (Tr. pp. 148), and that the only law discussed was this Kings County ordinance.

Neither Prior nor the District Attorney testified that, during this conference, or at any other time, the number of pickets that might be stationed at the Boswell plant was discussed. The District At-

torney testified that he believed Prior explained the method which he was operating under, and he told Prior he could see nothing wrong with the method that was being used, that so long as his men were not on private property but were on public right of way, and while they were they didn't have a sufficient number to interfere with people going and coming along that right of way, and so long as he didn't have cars that were interfering with traffic along the right of way, and so long as they didn't use threats or force, that he was not violating the ordinance (Tr. p. 180).

It is also stated in said Finding that the connection was made and the chief of Police of Corcoran, through an inter-office communication system in connection with the Telephone Exchange at Corcoran, listened in to the whole conversation. The evidence shows that this is a gross misstatement of the testimony. Prior, when testifying relative to the fact that the Chief of Police in Corcoran was listening over the telephone to the conversation between Prior and the District attorney, stated as follows:

“Apparently there was a hook up on an inter-office communication system in connection with the telephone exchange between the District Attorney's office and Sheriff's office, and the Chief of Police here in Corcoran.” (Tr. p. 146).

District Attorney Walch, in testifying to this particular matter stated as follows:

“At the meeting in my office when the ordi-

nance was read to Mr. Prior, I spoke to Mr. Prior and told him that I thought it would be a very excellent idea if I got the Chief of Police of Corcoran on the wire and . . . so that he could listen in on the conference between Mr. Prior and myself so that when I gave my interpretations of the ordinance and the law to Mr. Prior, Mr. Springer would hear it first hand, and there would be no misunderstanding between the three of us. . . . I called Mr. Springer at his home . . . and asked him to stay on the wire while Mr. Prior and I talked back and forth about the situation. And everything I told Mr. Prior was heard by Mr. Springer." (Tr. p. 205).

The respondents, and each of them, specify all of the foregoing as Exception No. 116.

Exception No. 117.

Respondents, and each of them, hereby except to the whole of Finding No. 103, pages 50 and 51 of the Intermediate Report, upon the ground that said Finding is irrelevant to any of the issues of this case, and upon the ground that certain portions hereinafter specified do not fully and accurately state the testimony with respect to the matters therein stated.

District Attorney Walch testified that when the picketing first started, shortly following the conference with Mr. Prior about January 21, 1939, he went down to Corcoran to look things over. He saw

Mr. Prior there and they talked about the picketing, and Mr. Walch then went over to the Boswell office and talked with Mr. Louie Robinson. He told him that the picketing, the manner in which it was being conducted, was lawful. Mr. Robinson said, "We have no fault to find with the way it is being conducted." "We don't want any trespass." (Tr. pp. 207-8).

The respondents, and each of them, specify the foregoing as Exception No. 117.

Exception No. 118.

Respondents, Associated Farmers and Corcoran Telephone Exchange, hereby except to the whole of Finding No. 103, pages 50 and 51 of the Intermediate Report, upon the ground that it is based solely upon hearsay and incompetent testimony and upon the ground that no authority was shown from said respondents, or either of them, to any of the parties mentioned in said paragraph to speak or act for or on behalf of either of said respondents.

Said respondents, and each of them, hereby specify the foregoing as Exception No. 118.

Exception No. 119.

Respondents, and each of them, hereby except to Finding No. 104, page 51 of the Intermediate Report, upon the ground that certain portions of said Finding hereinafter designated are contrary to and unsupported by any evidence, and upon the further ground that said Finding incorrectly and incompletely sets forth the evidence relating to the matters mentioned therein.

It is stated in said Finding, among other things, that "on January 23, 1939, at a legally called a meeting of Local 21798, a vote was taken and it was voted to place pickets. . . ." The record shows that this is a misstatement of fact, as Prior himself testified that the matter of picketing was discussed at a meeting of union members in the evening of January 21, 1939, which meeting was held in Prior's hotel room in Corcoran. That in addition to Prior there were present at this meeting Spear, Powell, Johnston, Martin, Wingo, and Andrade (Tr. p. 150). Prior testified that at this meeting he explained the reasons why picketing had not been previously instituted, but testified:

"We felt that it would be necessary to place the pickets down there and make the boycott still more effective. And the members of the organization present voted to take that action."

The evidence shows that the institution of picketing was voted by only six members of the Union. There was no evidence whatever to show that the meeting at which this vote was taken was a legally called meeting.

On cross-examination, Prior was asked to state what, if any, requirement is contained in the constitution and by-laws of the American Federation of Labor, so far as a quorum of union membership necessary to authorize picketing is concerned, and replied that this is a matter which is left strictly to the local autonomy of all local unions. He was then asked whether, in the case of this particular

Local, any rule or custom had been adopted with respect to the number of members necessary to constitute a quorum to authorize picketing. Prior stated there had been no definite rule set up with regard to that matter by the Local pertaining to picketing. That those matters are just taken care of the same as any other routine business of the organization. That the only rule they have in any local union is the rule pertaining to the calling of a strike. (Tr. pp. 437-40).

The evidence shows very clearly that the vote on picketing was taken at merely an informal meeting of only a few of the Union members.

The following portion of said Finding No. 104, to-wit:

“at this phase of the labor trouble at the Boswell plant the Associated Farmers stepped into the picture and their efforts towards organization and the part they played in this matter is hereinafter discussed as follows”

is contrary to and unsupported by any competent evidence. No competent or credible evidence was introduced which showed or tended to show that respondent, Associated Farmers, “stepped into the picture” or exerted any “efforts toward organization,” as referred to in said Finding, or otherwise.

The respondents, and each of them, specify all the foregoing as Exception No. 119.

Exception No. 153.

Respondents, and each of them, hereby except to the whole of Finding No. 137, page 71 of the Inter-

mediate Report upon the ground that said Finding is contrary to and unsupported by the evidence, and upon the ground that the evidence fails to show that respondents, or any of them, are engaged in interstate commerce within the meaning of the National Labor Relations Act and fails to show that respondents, or any of them, are within the jurisdiction of the National Labor Relations Board.

Respondents and each of them, hereby specify the foregoing as exception No. 153.

Exception No. 165.

The respondents, and each of them, hereby except to the following portion of Finding No. 147, page 76 of the Intermediate Report, to-wit:

“in 1926, she, Mrs. Dunn, was promoted to head operator, and in fact, by Glenn’s own admission managed the Exchange for him”,

upon the ground that said portion of said Finding is not supported by the evidence and is contrary to the evidence.

The undisputed evidence shows that although the Exchange was incorporated in 1923, Mr. Glenn did not become the majority stockholder and president and general manager until about September 12, 1926 (Tr. p. 2878); that the Exchange operates only within the city limits of Corcoran, which is a city of about 2,000 population (tr. 1987); and that during the year and one-half period immediately preceding March 1, 1939, it employed only six operators, including Mrs. Dunn and also including Mr. Woodruff (tr. 2819). However, Mr. Woodruff’s

principal job was that of lineman and repairman (tr. 2828 and 2900), and he spent only a part of his time in the office (tr. 2902).

The undisputed evidence also shows that although the running of the operators was left largely to Mrs. Dunn as head operator, the business part of the exchange was taken care of by a man who was employed as bookkeeper (Tr. 2886-8); that each one of the employees had their place in the organization, and that Mr. Glenn generally supervised the whole thing.

The respondents, and each of them, specify the foregoing as Exception No. 165.

Exception No. 166.

Respondents, and each of them, hereby except to the whole of Finding No. 148, page 76 of the Intermediate Report, and to every portion thereof, upon the ground that said finding is contrary to and unsupported by the evidence, and is irrelevant to any issue in the proceeding; and upon the ground that the matters stated in said Finding are based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of said respondents; and upon the ground that no evidence was introduced which showed or tended to show any connection between respondents or any of them and the matters referred to in said finding, or any authority conferred by respondents or any of them upon any person mentioned in said Finding to in any way act, speak for or represent the respond-

ents, or any of them, with respect to any matter referred to in said Finding.

Immediately prior to the introduction of the testimony upon which said Finding is based, respondents, and each of them, duly objected to the reception of any evidence in support of the charge involving respondent Exchange, upon the ground that there had been no service upon any of the respondents of the charge filed by Mrs. Dunn with the Board on March 14, 1939, and upon the further grounds that no authority was shown from Mrs. Dunn to Prior to file the Fourth amended charge herein; and upon the further ground that there had been no proof of the jurisdiction of the Board over respondent Exchange. The Trial Examiner erroneously overruled said objection and erroneously permitted the introduction of such testimony to which respondents, and each of them, duly excepted and do hereby except (Tr. p. 1058).

No evidence was introduced relating to the identification of Secord, other than the testimony of Dorothy Dunn that Secord was an employee of the Boswell Company (Tr. p. 1064), and there was no evidence whatsoever to show that he was in anywise authorized by said respondents, or any of the respondents, to make any of the alleged statements to Dorothy Dunn on behalf of any of the respondents or to in any wise bind any of the respondents with respect to any of the matters involved in this proceeding.

The witness was also asked to state the conversa-

tion which allegedly took place with Secord in the house after Mr. Sprecher left. The respondents objected thereto on the ground it called for hearsay and was not binding upon any of the respondents, and incompetent, irrelevant and immaterial. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (Tr. p. 1065). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 166.

Exception No. 167.

Respondents, and each of them, hereby except to the whole of Finding No. 149, pages 76 and 77 of the Intermediate Report, upon the ground that said Finding is contrary to and unsupported by the evidence, and is irrelevant to any issue in the proceeding; and upon the ground that the matters stated in said Finding are based entirely upon hearsay and incompetent testimony which was erroneously introduced over the objection of said respondents; and upon the ground that no evidence was introduced which showed or tended to show any connection between respondents or any of them and the matters referred to in said Finding, or any authority conferred by respondents, or any of them, upon any person mentioned in said Finding to in any way act, speak for or represent the respondents, or any of them, with respect to any matter referred to in said Finding.

The following portion of said Finding, to-wit:

“Secord told Dorothy that she was very much in the wrong with the people of Corcoran; that she had been seen at the picket line and that many of the employees of the Boswell Company had seen her there and were very much worked up over the fact that she had been at the picket line, and as she testified, that ‘I should apologize to W. W. Boswell for he was very angry at the fact that I had been seen there’ ”

is based solely on hearsay evidence which was erroneously introduced over the objection of respondents. As pointed out in Exception No. 166 (Exception to Finding No. 148) the evidence failed to show any authority conferred upon Secord to speak for any of the respondents. At the time said testimony was introduced, respondents duly interposed an objection thereto upon the ground that said evidence was hearsay and incompetent, irrelevant and immaterial and not shown to be authorized by or connected with any of the respondents. The Trial Examiner erroneously overruled said objection and permitted said testimony to be introduced, to which respondents duly excepted and do hereby except (Tr. p. 1069).

Furthermore, said entire Finding and also preceding Finding No. 148 is based entirely upon the incompetent, irrelevant hearsay testimony of Dorothy Dunn, which testimony was erroneously admitted in evidence by the Trial Examiner over the repeated objections of each of the respondents.

Upon the conclusion of Dorothy Dunn's testimony, all of the respondents moved to strike the entire testimony. The respondents Boswell Company and Associated Farmers moved to strike such testimony upon the grounds previously stated in support of their objection to the introduction of such testimony and upon the further ground that there was no jurisdiction shown by the record in the board over either of said respondents, and upon the further ground that there was no allegation in the complaint that either of said respondents acted in the interests of the Exchange or came within the definition of employer under the Act. The motion of respondent Telephone Exchange to strike such testimony was upon the grounds stated before the introduction of the testimony, that there was no showing of any jurisdiction by the Board over said respondent, that such testimony was incompetent, irrelevant and immaterial and had no bearing on the case and did not tend to prove or disprove any of the issues, so far as the respondent Telephone Exchange was concerned. Both of these motions was denied by the Trial Examiner and an exception taken (Tr. pp. 1075-6). The respondents, and each of them, hereby except to the denial of said motions upon the grounds above stated, which were urged in support of such motions.

The following testimony, although erroneously admitted, is pertinent in considering the credibility of Dorothy Dunn and her mother, Margaret A. Dunn:

Dorothy Dunn testified she first met Sprecher on the bus while coming from Los Angeles to Corcoran about February 1, 1939 (Tr. pp. 1070-2). However, her mother Margaret A. Dunn stated in the sworn charge which was filed with the National Labor Relations Board at San Francisco against the Exchange, March 14, 1939, and the jurat of which was dated March 13, 1939, that "the accusations came because my daughters were talking to Mr. Prior, a labor organizer. They, however, were receiving a personal message through Mr. Prior from Drexel Sprecher, a National Labor Relations Board attorney, who one of my daughters met in Los Angeles long before there was any labor trouble in Corcoran." (Board's Exhibit No. 1-q). Mrs. Dunn admitted that the reference in the above quoted portion of the Charge to one of her daughters referred to Dorothy Dunn (tr. 2062). Dorothy Dunn also testified that after coming to Corcoran she received a letter from Mr. Sprecher and about February 8 she stopped at the picket line at the Boswell Plant and spoke to Prior about this letter, and they discussed a few personal things about her knowing Mr. Sprecher (Tr. pp. 1066-7). This fact supports the statement made by her mother that she (Dorothy Dunn) had met Sprecher long before any labor trouble at the Boswell plant arose.

Dorothy Dunn also testified that she did not know Prior before the time she met him at the bus station in Corcoran on February 1, 1939 (tr. 1063). However, she also testified that she introduced Mr.

Sprecher and Prior to each other (tr. 1064). Upon cross examination she denied having given any such testimony (tr. 1073).

She testified on direct examination that while talking with Mr. Prior at the picket line on February 8, 1939, they talked about "the Boswell strike" (Tr. p. 1067). However, upon cross-examination she denied that anything was said about a "strike" and stated they were not talking about the strike (Tr. pp. 1073-4).

The evidence affirmatively shows that Dorothy Dunn never talked to W. W. Boswell or Mr. Glenn about matter referred to in said Finding (Tr. pp. 1071-2).

The respondents, and each of them, specify all of the foregoing as Exception No. 167.

Exception No. 168.

Respondents, and each of them, hereby except to the whole of Finding No. 150, page 77 of the Intermediate Report, upon the ground that said Finding is unsupported by any competent evidence in this case and is based solely upon unsupported hearsay evidence erroneously introduced over the objection of respondents.

The evidence failed to show any authority conferred upon any of the persons referred to in said Finding to speak for or on behalf of any of the respondents. At the time this testimony was introduced respondents duly interposed objections to said testimony upon the ground that it was hearsay and not binding upon any of the respondents, and

respondent Associated Farmers objected upon the additional ground that there was no connection shown between said respondent and any of the persons present at the alleged conversation between Mrs. Dunn and Galusha. The Trial Examiner erroneously overruled all said objections and permitted the introduction of said testimony to which respondents duly excepted and do hereby except (Tr. p. 2024, line 23; p. 2025, line 4; p. 2025, lines 17 to 20; p. 2026, lines 9 to 13).

Furthermore, the statement in said Finding to the effect that Mrs. Dunn had heard that a petition had been "circulated and given to Glenn" is not even supported by the incompetent hearsay testimony upon which said Finding is based. Mrs. Dunn's testimony was that she told Galusha she understood a petition had been circulated "to get" Mr. Glenn to relieve her in her work (Tr. p. 2025).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 168.

Exception No. 170.

Respondent Exchange hereby excepts to the whole of Finding No. 151, page 77 of the Intermediate Report, upon the ground that said Finding is not supported by any substantial evidence, and is against the weight of the evidence.

Said respondents, and each of them, also hereby except to the following portion of said Finding, to-wit:

"They talked about the labor trouble at the Boswell plant and on that point Glenn told Mrs.

Dunn, that because of the labor trouble the men were worked up over the situation and that any little thing that might take place would cause a lot of trouble in town.”

upon the ground that said portion of said Finding does not fully or completely state the testimony of Mrs. Dunn with respect to the matter therein mentioned. Mrs. Dunn’s testimony with respect to this matter was as follows:

“He told me about the labor trouble . . . Well he just told me that, what everybody else knew in town that there had been a disturbance and that the men were just all worked up over the situation, and that any little thing that would take place just might cause an awful lot of disturbance in town.” (Tr. p. 2029).

Said Respondent hereby specifies the foregoing as Exception No. 170.

Exception No. 171.

Respondent Exchange hereby excepts to Finding No. 152, page 77 of the Intermediate Report, upon the ground that certain portions of said Finding, hereinafter designated, are based solely upon hearsay and incompetent testimony, erroneously introduced over the objections of respondent Exchange, and are unsupported by, and are contrary to, the evidence.

It is stated in said Finding that at 8:00 o’clock on the morning of February 16, Dunn called Glenn and requested that he come to her home. Mrs. Dunn’s

testimony with respect to this matter was that after February 16, she again talked with Mr. Glenn on Saturday morning of that same week, which would be February 18, 1939, and not February 16, as stated in said Finding (Tr. p. 2029).

It is stated in said Finding that:

“Glenn agreed and when he reached the Dunn home, told Mrs. Dunn that he had talked to Forrest Riley and Riley had informed him that he (Riley) knew about the men coming to see him about the discharge of Mrs. Dunn.”

This statement is not only unsupported by, but is directly contrary to, the evidence. Mrs. Dunn testified that upon the occasion referred to she told Mr. Glenn of a conversation that had been repeated to her by Mr. Galusha concerning this affair (Tr. p. 2030). She told Mr. Glenn that Mr. Galusha had told her (Tr. p. 2030) that he, Galusha, had talked to Forrest Riley about this affair (Tr. p. 2031), and that Galusha had said that Forrest Riley told him he (Riley) knew about this meeting with these men and that Bill Boswell told him (Riley) that he (Boswell) would get her job if it was the last thing he did; that he (Boswell) was going to put detectives and a dictaphone in her home and have the girls watched to prove their point; also that he (Boswell) said he had no objection to her work or anything about her but they were not going to tolerate having any of them associating with the pickets (Tr. p. 2033).

The record clearly shows that at the meeting above

referred to Mrs. Dunn was repeating to Mr. Glenn a conversation which she had had with Mr. Galusha, in which Mr. Galusha had told her what Mr. Riley had told him, Galusha, regarding a conversation which Riley purportedly had with W. W. Boswell, and that when Mrs. Dunn repeated her conversation with Galusha to Mr. Glenn she was repeating to him alleged conversations some of which were as much as four or five times removed.

W. W. Boswell, when called as a witness, categorically denied having made any such statements to Mr. Riley, or any on else. (tr. 2780). His testimony was not denied. Furthermore, the evidence shows that although Forrest Riley was called to the stand as a witness on behalf of the Board during the course of the hearing he was not asked anything at all regarding the alleged conversation with Mr. Galusha, and there was no evidence to in any way substantiate any of the alleged conversations testified to by Mrs. Dunn, aside from her alleged conversation with Mr. Glenn. It is clear from the evidence that the statement contained in the above mentioned Finding to the effect that Mr. Glenn told Mrs. Dunn of a conversation which he had with Forrest Riley is a gross misstatement of the record.

The record shows that Mrs. Dunn's entire testimony is replete with contradictory and inconsistent statements, and that her testimony is not entitled to any weight as against the direct and positive statement of Mr. Glenn and other witnesses who testified in support of the respondent Exchange. The

entire lack of credibility of her testimony is illustrated by the following instances (in addition to the other instances hereinabove referred to in Exception No. 167 to Finding No. 149):

Mrs. Dunn testified on direct examination that she had a conversation with Mr. Glenn on each of the following dates to wit, on or about February 16, 1939, (Tr. p. 2027), one on Saturday morning of that same week, which would be February 18, 1939 (Tr. p. 2029), one on March 1, 1939 (Tr. p. 2033), and a telephone conversation on the morning of March 2, 1939 (Tr. p. 2035). However, upon cross-examination, she testified that her second conversation was on March 1, (Tr. p. 2075), she was positive it was on March 1 (Tr. p. 2077). Upon again being asked to fix the date of the second conversation she again testified positively that it was March 1 (Tr. p. 2079). This testimony is substantiated by the testimony of Mr. Glenn, who testified that he talked with Mrs. Dunn about the middle of February 1939, when he went to her home and saw her at her request (Tr. p. 2838), and that the next time he talked with Mrs. Dunn regarding her work was March 1, 1939, which conversation was held at the telephone office (Tr. p. 2841).

When asked upon cross-examination if she had heard about there being some disturbance at the Boswell plant in November 1938, she stated "Yes; I don't remember" (Tr. p. 2064), but finally admitted when pressed that she had heard the talk around town from time to time concerning the Boswell situation ever since it existed (Tr. p. 2065).

On cross-examination, Mrs. Dunn was asked how long it was before she took the stand that morning that she last talked with anyone concerning her testimony in the case (Tr. p. 2079) and she replied, "Well, I don't know". She was then asked if she had gone over her testimony with Board's counsel, and was forced to admit that she had gone over the matter with one of the Board's attorneys the previous night (Tr. p. 2080).

On direct examination, Mrs. Dunn testified that it was during her conversation of February 16, 1939, with Mr. Glenn that leakage of information over the board was mentioned (Tr. p. 2027), but on cross-examination she testified that the conversation during which complaints against her were discussed was the conversation of March 1 (Tr. pp. 2077-9).

Respondent Exchange hereby specifies all of the foregoing as Exception No. 171.

Exception No. 174.

Respondents Exchange hereby excepts to Finding No. 154, pages 78 and 79, of the intermediate Report, upon the ground that said Finding does not accurately or completely state the evidence with respect to the matters therein referred to.

Glenn testified that about the middle of February 1939, Mrs. Dunn had called him to her home saying she wanted to talk to him. When he got there she asked him if he had heard anything about a petition that was being circulated. He asked her what the petition was. She said it was a petition to get her discharged because her daughters had gone down

to the gin (tr. 2838). He told her that he had not heard anything about any petitions of that kind, that she needn't worry—then she went on to say that the girls had talked the morning before about the pickets being in down to the gin and she asked them why they didn't go down there and see. The girls had said they hadn't seen any pickets before, how it was worked, so she had advised them to go down there and see. He told her the fact of a petition being circulated could have no bearing at all “on our plant”, he couldn't take cognizance of that because the exchange was a public service corporation and must keep neutral in everything of that kind. He then went on and testified, substantially as set forth in the questions and answers shown in the said Finding, but, in addition thereto, he also testified that when Mrs. Dunn mentioned the matter was the first he had heard anything about a petition being circulated and was also the first he had heard anything whatsoever concerning Mrs. Dunn's daughters being seen talking to the pickets (tr. 2840).

Said respondent specifies all the foregoing as Exception No. 174.

Exception No. 175.

Respondent Exchange hereby excepts to Finding No. 155, page 79 of the Intermediate Report, upon the ground that said Finding does not accurately or completely state the evidence, with respect to the matters therein referred to.

Mr. Glenn's testimony with respect to the conversation in question was substantially as follows:

He testified that about 8:00 o'clock on the morning of March 1, 1939, Mr. Woodruff, who was the husband of one of the operators who had been employed at the Exchange for many years, came to his (Glenn's) office in the bank building, and told him Mrs. Woodruff had decided to resign her position (tr. 2846). Mrs. Woodruff had also advised him that she was going to quit (tr. 2845). Glenn then went to the telephone office and called Mrs. Dunn into the back office and told her that Mrs. Woodruff had informed him that she had made every effort to get along with Mrs. Dunn, but found it impossible to do so, and that she wanted to quit. He told Mrs. Dunn that on account of her physical condition and use of liquor that was so offensive to the girls, that he wanted her to resign. She told him that she couldn't resign; that she simply had to work; that she would go out and apologize to the girls and make every effort to get along (tr. 2843). After Mr. Glenn had talked with Mrs. Dunn in the morning, he went out to his ranch and when he came back about 2:00 o'clock that afternoon, Mrs. Dunn ran past him sobbing hysterically as he entered his office. (tr. 2847). When he entered the office he noticed that the faces of the other operators were white and they were very much distraught (tr. 2848). He then went on in to the back office, and while he was sitting there the phone rang and it was Mrs. Dunn calling him. She asked if he would come to the house and talk to her, and he told her that he did not want to talk to her any more at that time, and would not go out to her

house, that he thought the best thing for her to do was to stay at home and rest. She then asked if he was going to let her come back, and he told her he did not know, that he would let her know later (tr. 2847-8).

Said respondent specifies all the foregoing as Exception No. 175.

Exception No. 176.

Respondent Exchange hereby excepts to Finding No. 156, pages 79 and 80 of the Intermediate Report, upon the ground that certain of the matters therein referred to and hereinafter designated are not supported by the evidence and are contrary to the evidence and do not fully or completely state the evidence.

Mr. Glenn's testimony, with respect to the matters referred to in said Finding, was substantially as follows:

He testified that in the last part of January 1939, he called Mrs. Dunn into the back office and told her that Albert Armor of the Boswell Company had complained that she was running around nights with Fred Galusha, and they objected very strenuously because Fred Galusha was superintendent of the Anderson-Clayton Gin company and since she was handling their intimate business calls over the phone they objected to her running around with a competitor very much (Tr. p. 2832); that Mr. Armor had made this complaint to Mr. Glenn on the morning of the same day he (Glenn) talked with Mrs. Dunn (Tr. p. 2833). She told Mr. Glenn that she did not

consider it was anybody else's business what she did on her own time, and he told her that so far as the personal element was concerned it was none of his business, but so far as the business element was concerned he was going to make it his business and if that thing was going to continue he wanted her to resign. She cried and told him she was very sorry he felt that way about it, and he assured her that she must stop the thing because of the slips that were possible, and she assured him she would stop. He also spoke to her about the dissension that was going on in the office, told her that the girls were complaining and that this dissension in the office would have to stop (Tr. pp. 2833-4). Mr. Glenn testified that Albert Armor, at the time of complaining about Mrs. Dunn running around with Galusha, had mentioned there had been a leak of information through the Board a couple of years before, and that through that leak one of the Boswell Company's customers had lost a very valuable concession, and Mr. Armor stated if there were any more leaks they felt they should hold the telephone company responsible (Tr. p. 2835).

It is apparent from the foregoing recital of Mr. Glenn's testimony that many of the material portions of such testimony were entirely omitted from said Finding, and that the Trial Examiner placed an improper construction upon, and incorrectly stated, said testimony.

Respondents Exchange hereby specifies the foregoing as Exception No. 176.

Exception No. 178.

Respondent Exchange hereby excepts to the following portion of Finding No. 157, page 80 of the Intermediate Report, to wit:

“The undersigned asked Glenn the following questions:

“Q. Did you blame Mrs. Dunn for that leak?

“A. No, sir.”

upon the ground that said portion of said Finding does not fully state the evidence with respect to the matter referred to.

Mr. Glenn testified that the reason he did not blame Mrs. Dunn for that leak was because Mr. Armor, at the time of mentioning the matter, did not say who was to blame for the leak, but merely stated a leak of information across the switchboard of the Exchange had occurred a couple of years previously (Tr. p. 2835-6).

Respondent Exchange also hereby excepts to the remaining portion of said Finding No. 157, which refers to crossed cables, upon the ground that said portion of said Finding is not supported by the evidence and is contrary to the evidence and does not accurately or fully state the evidence with respect to the matters therein referred to.

Mr. Glenn's testimony with regard to said matters was substantially as follows:

Mr. Glenn was asked by Board's counsel if in the past he had received complaints regarding the fact that wires became crossed and conversations switched to different people than those for whom

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they were intended. Mr. Glenn explained, in response to this question, that the cable, which is a mass of telephone wires inside, has an outer casing which is composed of lead, and that the cable is supported by rings. He stated that sometimes, due to wind action, these rings wear through the outer casing on the bottom of the cable and result in a contact being formed between the ring and the wires inside the cable, and that when this condition occurs it results in a crossed talk, and it is very difficult to locate this type of trouble; that sometimes it is necessary to look for quite a while before the trouble can be located, and if it cannot be located, then the cable is cut out. He stated that this condition happens right along, and it is necessary to change the rings right along. He also stated that this condition depends largely upon the action of the wind; that when the wind is blowing it has a tendency to hold the cables in a position where the ring makes a contact with the inside wires, but when the wind is not blowing the cable goes back into place and the contact is broken. He stated that the difficulty in locating the worn places on the cable is because the wind action makes and breaks the contact with the wires (Tr. pp. 2883-5).

It is clear from the foregoing recital of Glenn's testimony that there was no evidence to support the statement contained in said Finding either that cables crossed, or that when the rings wore through the cable and contacted the wires inside that others could take up the receivers and hear conversations between parties even though they were on a differ-

ent line. Furthermore there was no evidence that the leak of information over the switchboard complained of by Albert Armor to Mr. Glenn, and which leak had occurred about two years prior to January 1939, was in anywise the result of crossed talk either by reason of the wearing through of the cables due to the natural action of the elements or otherwise.

Respondents Exchange hereby specifies the foregoing as Exception No. 178.

Exception No. 179.

Respondent Exchange hereby excepts to the whole of Finding No. 158, page 80 of the Intermediate Report, upon the ground that the evidence with respect to the matters referred to is not fully stated.

Mr. Glenn testified that although complaints had been received about Mrs. Dunn prior to a year and a half before March 1, 1939, there was not an unusual amount, but commencing about a year and a half immediately prior to March 1, 1938, the complaints about her increased in frequency (Tr. p. 2808). Some of the parties in addition to those named in said Finding who complained to him about her were Kenneth Betell, a pump man and farmer, John Kanst, a dairyman and farmer, Marion Phillips, of the San Joaquin Light & Power Corporation, Bill Mink, a truckman, T. K. Brown, and a number of others. He testified that during this last mentioned period the complaints about her were coming in right along (Tr. pp. 2809-11).

Respondent Exchange specifies all the foregoing as Exception No. 179.

Exception No. 181.

Respondent Exchange hereby excepts to the whole of Finding No. 160, page 81 of the Intermediate Report, upon the ground that the evidence with respect to the matters referred to in said Finding is not fully or accurately stated.

It is stated in said Finding that Mr. Glenn admitted that he had had numerous complaints against other operators, and that there was never a year without complaints both against the operators and because of poor service.

Such statement is contrary to and misstates the testimony. There was absolutely no evidence that Mr. Glenn ever had numerous complaints either against his other operators or against the service rendered by the Exchange. This is clearly shown by his testimony, which was substantially as follows:

Mr. Glenn, when asked by the Trial Examiner, if he had ever had any complaints against his other operators, testified

“We always have some complaints” (Tr. p. 2889). When asked by the Trial Examiner concerning complaints against the service, Mr. Glenn testified they had had complaints but don’t have many complaints about the service when the lines are kept up (Tr. p. 2890), that there hadn’t been so many complaints about the service in the last year—maybe a dozen (Tr. p. 2891).

Mr. Glenn also testified that during the fall of 1938—from the first of July to the end of the year

he had received more complaints regarding the service rendered by Mrs. Dunn than against that rendered by any of his other operators (Tr. pp. 2893-4).

The undisputed evidence also shows that on the morning of March 1, 1939 Mr. Glenn asked Mrs. Dunn to resign, and she herself admitted on cross examination that on this occasion Mr. Glenn mentioned the complaints he had received about her and suggested that in view of her illness and these complaints that she should give up her position and asked her to resign (Tr. pp. 2077-8). She also admitted on cross examination that she had been seriously ill for about three years, and during the year immediately preceding March 1 she had been in pain from time to time while working on the job, and had mentioned that fact to the other operators as well as to Mr. Glenn (Tr. pp. 2069-70).

The facts with respect to Mrs. Dunn's physical condition were also substantiated by the testimony of Mr. Glenn, who testified that about a year before Mrs. Dunn was discharged there was a noticeable change in the manner in which she was performing her duties at the Exchange. She had to brace herself with a pillow when sitting at the Board, and was nervous, and started to drink liquor, and there were times when she would go to work she would have to put on a relief operator and go home (Tr. pp. 2806-7). This testimony was not denied by Mrs. Dunn, except that she denied having drank liquor on the job. She admitted, however, that several

months prior to March 1 she had told Mr. Glenn that she had to take four glasses of Port wine a day for her health (Tr. p. 2082).

Respondent Exchange hereby specifies all of the foregoing as Exception No. 181.

Exception No. 182.

Respondent Exchange hereby excepts to Finding No. 161, page 81 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence and are contrary to the evidence, and upon the further ground that the said Finding does not fully or accurately state the evidence with respect to the matters therein referred to.

The record shows that there was nothing in Mr. Glenn's testimony which in any wise warranted, either expressly or impliedly the statement contained in said finding:

“that he admitted that he talked to practically all the business men in Corcoran about the labor trouble . . . but did not talk to a single farmer regarding the matter”.

His testimony with regard to the matters referred to in said Finding was substantially as follows:

Mr. Glenn testified that the basis for his statement to Mr. Dunn that the whole community was in a jitter was from his own observations and from conversations that he had heard (Tr. p. 2873). He was then asked to state the names of a few with whom he had such conversations, or the names of

people who engaged in conversations that he heard. He then named J. W. Guiberson of the bank, R. P. Williams, who runs a grocery store, Fred Carroll of the Light and Power Company, Mr. Maroot, who owns a grocery store, Dick Hart, who is Mr. Glenn's partner in his office, and stated that they were all talking, it was just common talk. He stated, however, that he had never talked about this subject with Mr. Boyett (Tr. p. 2874). Continuing his testimony, he stated he had also talked with Earl Lewis, of the Farmers Lumber Company, George Cutter, of the Cutter Milling Company, Lyle Weir of the Corcoran Milling Company, that "it was just the topic of conversation around".

When asked if he talked with any farmers about that subject, he stated

"Well, I don't remember that I did, Mr. Mouritsen, I wouldn't *said* I didn't".

he was then asked if it was not correct that he testified earlier that he talked with practically everyone in the community about the matter at that time, and he replied

"No, I was just talking in general when I was talking that time, just in generalities, Mr. Mouritsen. Maybe I covered a lot of territory, but believe me, it was pretty strong feeling among those I did talk to". (Tr. p. 2876).

He was again asked if he did not recall having discussed the matter with a farmer, and he replied

"I would not say that, Mr. Mouritsen, at all, no. I wouldn't say that I hadn't."

He then testified he had discussed the matter with Louis T. Robinson, but didn't remember discussing it with the farmers much. (Tr. p. 2877).

It is clear from the testimony that Mr. Glenn did not testify that he talked to practically all the business men in Corcoran about the labor trouble, nor did he deny that he ever talked to a single farmer in that vicinity about the matter, and that the two statements contained in said Finding to such effect are a gross misstatement of the evidence, and that the statement continued in said Finding that

“it is evident that Glenn withheld information during the giving of his testimony regarding important facts pertaining to this case and that his testimony is greatly reduced in value”

is not supported by any evidence.

Respondent Exchange hereby specifies all the foregoing as Exception No. 182.

Exception No. 185.

Respondent Exchange hereby excepts to Finding No. 162, pages 81 and 82 of the Intermediate Report, upon the ground that said Finding incompletely and inaccurately states the testimony referred to in said Finding, and upon which said Finding is based, as hereinafter set forth:

Blakeley Crary testified that he had lived in Corcoran since 1930 and had been cashier of the First National Bank of Corcoran since the bank was organized, July 21, 1934 (Tr. p. 2894). In said finding this date was stated as July 1, 1934, which is contrary to the evidence.

He testified that prior to that time he was assistant cashier of the old First National Bank of Corcoran, and when it was closed he was assistant conservator of the old bank. He testified he had known Mrs. Dunn ever since he had been in Corcoran and been with the bank; that the bank had two trunk lines and four telephones in the bank; that he also had a telephone in his own home, and that he recognized Mrs. Dunn's voice over the telephone (Tr. p. 2895).

It is stated in said Finding that

“in January 1939, when Glenn was in his bank he said he told Glenn that he had attended a dinner a short time prior . . .”.

This statement is contrary to the evidence, as Mr. Crary, when asked to state where this conversation took place, stated it was in Mr. Glenn's office (Tr. p. 2896).

After the examination of Mr. Crary had been completed by both counsel, the Trial Examiner took over the examination and Mr. Crary testified, in response to the Trial Examiner's questions, that he used the phone a great deal, something like twenty or thirty times a day and that he never had any complaints to make against anyone except Mrs. Dunn (Tr. pp. 2898-9). Upon further cross examination by Board's counsel, he testified that Mrs. Dunn was on duty part of the time when he used the phone, and although he did not know whether she was the day or night operator he knew he recognized her voice when she was on and he had found her on the day time and also in the evening (Tr. p. 2899).

Respondent Exchange hereby specifies all the foregoing as Exception No. 185.

Exception No. 186.

Respondent Exchange hereby excepts to Finding No. 163, page 82 of the Intermediate Report, upon the ground that said Finding incompletely and inaccurately states the testimony referred to in said Finding, and upon which said Finding is based, as hereinafter set forth:

As pointed out in the Exception No. 185 to Finding No. 162, above, Mr. Crary testified that he had known Mrs. Dunn since 1930; that in addition to the two trunk lines and four telephones which are installed in the bank, he also has a home telephone and recognizes Mrs. Dunn's voice over the telephone, and although he did not know whether she was the day or night operator, he did know that he recognized her voice when she was on and had found her on in the daytime and also in the evening. Mr. Crary's testimony was not denied, and, in fact, Mrs. Dunn herself admitted that upon at least one occasion she had had some words with Mr. Crary about the placing of one of his calls while she was on duty (Tr. p. 2073).

Respondent Exchange hereby specifies all the foregoing as Exception No. 186.

Exception No. 188.

Respondent Exchange hereby excepts to Finding No. 164, page 82 of the Intermediate Report, upon the ground that said Finding incompletely and in-

accurately states the testimony referred to in said Finding and upon which said Finding is based, as hereinafter set forth:

Mr. Dunn admitted on cross-examination that although his home is in Corcoran he does not live there continuously but travels up and down the pipe line and only comes home whenever he has an opportunity (tr. 2101); that when he got home on the evening of March 1, 1939, he found his wife crying. She was practically in hysterics, and he tried to find out what was the matter and she wasn't feeling in any condition to tell him, she said Mr. Glenn had asked her to resign and he told her he was going to find Mr. Glenn and find out what it was all about, and he then sought out Mr. Glenn to get the particulars of the case.

Respondent Exchange hereby specifies all of the foregoing as Exception No. 188.

Exception No. 190.

Respondent Exchange hereby excepts to Finding No. 165, pages 83 and 84 of the Intermediate Report, upon the ground that the statements therein contained are not supported by the evidence, and are contrary to the evidence in the respects herein-after set forth; and upon the further ground that the evidence with respect to the matters referred to in said Finding is incompletely and inaccurately stated.

It is stated in said Finding that on the morning of March 3, Glenn picked up Dunn in front of his office and they had an alleged conversation. The un-

disputed testimony shows that this alleged conversation was held March 2, 1939, and not March 3, 1939.

Mr. Dunn testified that when he talked with Mr. Glenn on March 2, Mr. Glenn said he had sent for Mr. Dunn because he wanted to correct an impression that he knew Dunn had the evening before, that Dunn thought the Boswell people were bringing pressure to bear on him to discharge his wife. That Glenn said he wanted to let Dunn know that was not so, that he was discharging his wife for her own good, that she was getting along in years and was nervous and highstrung, and he didn't think on account of her health she ought to be working down there at the telephone office (Tr. p. 2098). In said Finding certain portions of the alleged conversation purported to be quoted from the record, but a comparison with the record shows these portions are misquoted. For instance, the following quotation appears in said Finding: "I laughed at them and a couple of days three of these men came to me, met me on the street corner and demanded that I do something about this." This testimony, as it appears in the record, reads as follows: "I laughed at them, and a couple of days ago three of these same men came to me again, met me on the street corner, and demanded that I do something about this." (Tr. p. 2100).

Mr. Dunn, when testifying to this conversation of March 2, also testified that Glenn made the following statements: "I went into the Exchange the

other day and I met your wife coming out of the door, she was half crying. I went on in and Lillian Fowler was crying at the Board." "I just can't stand that stuff." (tr. 2100).

Mr. Dunn's testimony shows that the matter of the alleged petition to have Mrs. Dunn discharged was discussed during the conversation of March 2, and Mr. Dunn said that several friends of theirs had told them a petition had been circulated. When asked, upon cross-examination, to name the friends referred to he testified that they were Mrs. Botts and Roy Filcher, that was all he could remember, and admitted that both of these people were mere acquaintances and not friends.

It is stated in said Finding, among other things, that "When asked by Mr. Clark whether or not the first thing he said to Mr. Dunn on that occasion was in substance or effect this 'You know there has been trouble, labor trouble at the Boswell gin' Glenn answered that he did not remember". This statement as it appears in the Finding is ambiguous, and appears to relate to the conversation of March 2, whereas, the evidence shows that it related to the alleged conversation of March 1 between Mr. Dunn and Mr. Glenn (tr. 2854-6 and 2866). Furthermore, Mr. Glenn had previously testified on direct examination with respect to the conversation of March 1, as follows, "Well, Mr. Dunn asked me what I was—what I was doing with his family and I told him that I—that it was his family, and that he would have to answer that himself", and it is clear from

the testimony that there was no inconsistency between his statements on direct and cross-examination.

It is also stated in said Finding that Glenn admitted that he had the conversation with Dunn on March 2, in substance as Dunn related it. This statement is not supported by the evidence and is contrary thereto.

Although Mr. Glenn admitted he had a conversation with Dunn on March 2, 1939, he did not in anywise admit that said conversation was in substance as related by Dunn. In this respect attention is called to Glenn's testimony (Tr. pp. 2863 to 2864).

Mrs. Dunn admitted on cross-examination that there had been plenty of occasions where she had had words with customers in addition to the time she had words with Mr. Crary, but claimed she did not have any more arguments and disputes with other customers of the Exchange than any other operator (tr. 2073-4).

Although Mrs. Dunn denied having drank liquor on the job, and also denied having kept any liquor in or about the Telephone Exchange office, Mr. Woodruff, who was employed as a lineman and repairman by the Exchange, and whose duties required him to go in and out of the office every day, testified that sometime during 1938 he saw a bottle of Port wine sitting on the ice box in the rear of the operating room, and a glass was sitting beside the bottle. Mr. Glenn asked him whose it was, and

he replied he did not know. After Mr. Glenn had left the office, Mr. Woodruff asked Mrs. Dunn why she had left it there, and she stated she forgot to put it away. (tr. 2902-4). He also saw some empty bottles in the ice box, but did not know who they belonged to. Upon another occasion in 1938, Mr. Woodruff saw part of a bottle of wine underneath the counter in the operating room. Mrs. Dunn told him she had been to see the doctor and the doctor had prescribed it for her as nourishment because she couldn't eat any food (tr. 2904). He also testified that on various occasions he smelled the odor of wine on Mrs. Dunn's breath while she was on duty in the office (tr. 2905-6).

He also testified that at times he saw Mrs. Dunn take a drink of wine while on duty, particularly on the morning she said she had been to see the doctor (tr. 2912).

Mr. Woodruff also corroborated Mr. Glenn's testimony that he had told Mr. Glenn, during the latter part of February, 1939 at his office in the Bank building, that Mrs. Woodruff was thinking of quitting because of the trouble she had been having with Mrs. Dunn. He stated that on the morning of this conversation when he went in to the office he found his wife crying, and asked her what was the matter, and she said she and Mrs. Dunn had had a misunderstanding. Mr. Woodruff then went to Mr. Glenn and asked him to investigate the matter, and if his wife was in the wrong to discharge her (tr. 2907-8).

The entire evidence shows that Mrs. Dunn was

discharged solely because of her ill health, inefficient service, complaints which were made regarding her services by numerous subscribers, her offensive habit of drinking wine while on duty, and the dissension which she created among the other employees in the office and that such discharge was not in anywise attributable to the labor trouble at the Boswell gin, or because of any suspected union activities as charged in the complaint in this case. Both Mrs. Dunn and her husband testified positively that she was not a member of any labor organization, and had never assisted or attempted to assist any labor organization in any manner (tr. 2105-6), and particularly that she was not a member of any labor organization with which Mr. Prior was connected and had not in many manner assisted or attempted any such labor organization (tr. 2108-9).

Respondent Exchange hereby specifies all the foregoing as Exception No. 190.

Exception No. 192.

Respondents, and each of them, hereby except to Finding No. 166, page 85, of the Intermediate Report, upon the ground that the Dunn charges therein mentioned were never served upon any of the respondents, and could not form the basis for this proceeding, and that such charges are incompetent, irrelevant, and immaterial, and were erroneously admitted in evidence over the objections of respondents (Tr. p. 34). Respondents duly excepted to the admission of said charges in evidence, and do hereby except thereto.

Respondents, and each of them, hereby specify the foregoing as Exception No. 192.

Exception No. 193.

Respondents, and each of them, hereby except to the whole of Finding No. 167, page 85, of the Intermediate Report, upon the ground that said Finding is based solely upon incompetent hearsay testimony erroneously introduced over the objections of respondents, and upon the further ground that there was no authority shown from any of the respondents to Forrest Riley to in any way act or speak for or bind the respondents, or any of them, with respect to any of the matters referred to in said Finding.

At the time of the hearing, the respondents, and each of them, objected to the introduction of the testimony by Mrs. Dunn regarding her alleged conversation of March 21, 1939, with Mr. Riley, upon the ground that it was incompetent, irrelevant, and immaterial and hearsay as to all respondents, no authority having been shown from any of the respondents to Mr. Riley to speak for them with respect to any matters under investigation in this proceeding. This objection was erroneously overruled by the Trial Examiner and an exception duly taken thereto (tr. 2037). It was also stipulated that such objection might be deemed to run to this entire testimony (Tr. p. 2039). The respondents, and each of them, hereby except to such ruling on all of the grounds above stated which were urged in support of their objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 193.

Exception No. 194.

Respondents, and each of them, hereby except to the whole of Finding No. 168, pages 85 and 86 of the Intermediate Report, upon the ground that said Finding is based solely upon hearsay and incompetent testimony erroneously introduced over the objections of respondents, and upon the ground that said Finding is unsupported by the evidence, and upon the further ground that there was no authority shown from any of the respondents to either Russell Slaybaugh or Boyett to in anywise act or speak for them with respect to any matters under investigation.

It is stated in said Finding, among other things, that Slaybaugh did not deny Mrs. Dunn's testimony. However, during the course of the hearing the Board called Slaybaugh as one of its witnesses, but did not examine him regarding his alleged conversation with Mrs. Dunn, or in anywise endeavor to corroborate her incompetent hearsay testimony with regard to this conversation.

Furthermore, there was absolutely no showing in the evidence that Slaybaugh was in anywise authorized by any of the respondents to represent or act for them with respect to this or any other matter involved in the proceeding.

At the time of the hearing, respondents, and each of them, objected to the introduction of any testimony by Mrs. Dunn respecting the alleged con-

versation with Slaybaugh upon the ground that it was hearsay, incompetent, irrelevant and immaterial as to all respondents. This objection was erroneously overruled by the Trial Examiner and exception was duly taken thereto (Tr. p. 2043). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

It is stated in said Finding that Mrs. Dunn's testimony respecting her alleged conversation with Boyett was not denied by Boyett. However, during the course of the hearing, the Board called Boyett as one of its witnesses, but did not examine him regarding his alleged conversation with Mrs. Dunn, or in anywise endeavor to corroborate her incompetent hearsay testimony with regard to this conversation.

At the time of the hearing, respondents, and each of them, objected to the introduction of any testimony by Mrs. Dunn respecting the alleged conversation with Boyett, upon the ground that it was hearsay as to all respondents. This objection was erroneously overruled by the Trial Examiner and exception was duly taken thereto (Tr. p. 2045). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

Said incompetent hearsay testimony relating to Mrs. Dunn's alleged conversation with Boyett is inaccurately and incompetently stated in said Finding. Mrs. Dunn testified that she had known Mr.

Boyett for about seventeen years (Tr. p. 2085); that he had been a rather good friend to her in a business way over quite a period of years, and she had confidence in him (Tr. p. 2086); and that he had merely come to her home at her request, and told her that he would attempt to use such influence as he had to get her job back (Tr. p. 2087). She stated that Mr. Boyett was merely trying to help her (tr. p. 2086).

The evidence affirmatively shows that the telegram which was sent by Mrs. Dunn to the Board's regional office in San Francisco on March 21, 1939, (Board's Exhibit No. 21) was sent by her of her own free will and accord, and not at the instigation or request of any of the respondents, or as the result of any action on the part of the respondents.

The respondents, and each of them, specify all of the foregoing as Exception No. 194.

Exception No. 195.

The respondents, and each of them, hereby except to Finding No. 169, page 86 of the Intermediate Report, upon the ground that the letter therein referred to (Board's Exhibit No. 22), was hearsay as to all respondents, and not in anywise binding upon them, and upon the further ground that the evidence with respect to said letter is not fully or accurately stated.

The evidence affirmatively shows that said letter was written and sent by Mrs. Dunn of her own accord; that the writing and sending thereof was not the result of any suggestion or action on the part

of the respondents, or any or either of them, and the writing and sending thereof was not authorized by said respondents, or any or either of them.

The respondents, at the time of the hearing, objected to the introduction in evidence of the letter referred to in said Finding upon the ground that it was incompetent, irrelevant, and immaterial and hearsay as to all respondents, and also self serving. This objection was erroneously overruled by the Trial Examiner and the letter was admitted in evidence as Board's Exhibit No. 22, and the respondents duly excepted thereto (Tr. p. 2047). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of their objection.

The respondents, at the time of the hearing, also objected to testimony by Mrs. Dunn relating to said letter, upon the ground that it was self serving. This objection was erroneously overruled by the Trial Examiner and an exception taken thereto (tr. 2048). Respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The respondents, and each of them, specify all of the foregoing as Exception No. 195.

Exception No. 196.

The respondents, and each of them, hereby except to Finding No. 170, page 86 of the Intermediate Report, upon the ground that the letter therein referred to is hearsay as to all respondents, and is not in any wise binding upon them, and upon the fur-

ther ground that there was no evidence which would establish or tend to establish that such letter was written either at the instigation or request of any of the respondents, or that the writing thereof was authorized by any of the respondents.

The evidence affirmatively shows that said letter was written by Mrs. Dunn of her own free will and accord.

The respondents, at the time of the hearing, objected to the introduction in evidence of the letter set forth in said Finding upon the ground it was incompetent, irrelevant, and immaterial and hearsay as to all respondents. This objection was erroneously overruled by the Trial Examiner and the document admitted in evidence and an exception was duly taken thereto (Tr. p. 2054). The respondents, and each of them hereby except to such ruling upon the grounds above stated which were urged in support of their objections.

The respondents, at the time of the hearing, objected to the introduction of testimony by Mrs. Dunn regarding an alleged conversation with Mr. Galusha on or about April 12, 1939, on the ground that such testimony was incompetent, irrelevant, and immaterial, and hearsay as to all of the respondents (Tr. p. 2049). It was stipulated that such objection was deemed to run to the entire conversation (Tr. p. 2050). The Trial Examiner erroneously overruled the objection and an exception was duly taken thereto (Tr. p. 2049). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

The respondents, at the time of the hearing, also objected to the introduction of testimony by Mrs. Dunn regarding an alleged conversation with Mr. Boyett, on or about April 14, 1939, upon the ground that such testimony was hearsay as to all of the respondents, and incompetent, irrelevant and immaterial, no authority having been shown to Mr. Boyett from any of the respondents to take part in this affair. This objection was erroneously overruled by the Trial Examiner and an exception was duly taken thereto (Tr. p. 2051). The respondents, and each of them, hereby except to such ruling upon the grounds above stated.

While the witness (Mrs. Dunn) was testifying to the alleged conversation of April 14, 1939, with Mr. Boyett, she was asked the following question by Mr. McTernan, "What did he say—did he say the same thing that Mr. Galusha had said the night before?" This question was objected to upon the same grounds above stated which were urged in support of the objection to her testimony regarding the conversation with Mr. Boyett. The Trial Examiner erroneously overruled the objection and an exception with duly taken thereto (Tr. p. 2053). The respondents, and each of them, hereby except to such ruling upon all the grounds above stated which were urged in support of the objection.

The respondents, at the time of the hearing, objected to the introduction of testimony by Mrs. Dunn regarding the notarization of her signature on the letter set forth in said Finding, and as to the mail-

ing of said letter, upon the ground that such testimony was incompetent, irrelevant, and immaterial and hearsay. It was stipulated that this objection was deemed to run to that entire line of testimony. The Trial Examiner erroneously overruled the objection and an exception was duly taken thereto. (Tr. p. 2055). The respondents, and each of them, hereby except to such ruling upon the grounds above stated which were urged in support of the objection.

The respondents, and each of them, specify all of the foregoing as Exception No. 196.

Exception No. 197.

Respondents, and each of them, hereby except to the following portion of Finding No. 171, page 87 of the Intermediate Report, to wit:

“there is considerable proof that members of the Associated Farmers brought pressure to bear upon Mrs. Dunn to withdraw her charges filed against the Corcoran Telephone Exchange because of her discharge”

upon the ground that said portion of said Finding is unsupported by and contrary to the evidence.

There is no evidence that any member or members of respondent Associated Farmers, or any other person, brought any pressure to bear upon Mrs. Dunn to withdraw her charges.

Respondents, and each of them, hereby specify the foregoing as Exception No. 197.

Exception No. 198.

Respondents, and each of them, hereby except to the whole of Finding No. 172, page 87 of the Intermediate Report, upon the following grounds, to wit:

(a) That said Finding is not supported by any evidence and is contrary to the evidence;

(b) That there was no showing that respondent Boswell Company was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the Act, or affected "commerce" within the meaning of Section 2 (7) of the Act;

(c) That said Intermediate Report does not contain any section numbered IV, (C).

Respondents, and each of them, hereby incorporate herein, as though stated herein in full, all of the exceptions to all Findings regarding alleged activities referred to in said Finding No. 172.

Respondents, and each of them, specify the foregoing as Exception No. 198.

Exception No. 200.

The respondents, and each of them, hereby except to Finding No. 173, pages 87 and 88 of the Intermediate Report, and every part and portion of said Finding, upon the ground that said finding is not supported by any evidence and that all of said finding is contrary to the evidence.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all

of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 173.

Respondents, and each of them, hereby specify the foregoing as Exception No. 200.

Exception No. 201.

The respondents, and each of them, hereby except to Finding No. 174, page 88 of the Intermediate Report, and every part and portion of said Finding, upon the ground that said Finding is not supported by any evidence and is contrary to the evidence and upon the further ground that there was no showing that respondent Boswell Company is within the jurisdiction of the Act or of the Board.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 174.

Respondents, and each of them, hereby specify the foregoing as Exception No. 201.

Exception No. 202.

The respondents, and each of them, hereby except to Finding No. 175, page 88 of the Intermediate Report, and every part and portion of said Finding, upon the following grounds, to-wit :

(a) That said Finding is not supported by and is contrary to the evidence ;

(b) That there was no showing that respondent Boswell Company is within the jurisdiction of the Act or of the Board ; and

(c) There was no showing that any act or ac-

tivity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the Act, or affected "commerce" within the meaning of Section 2 (7) of the Act.

Respondents, and each of them, hereby reincorporate herein, as though stated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 175.

Respondents, and each of them hereby specify the foregoing as Exception No. 202.

Exception No. 207.

Respondents, and each of them, hereby except to Finding No. 178, page 89 of the Intermediate Report, and every part and portion of said Finding, upon the following grounds, to-wit:

(a) That said Finding is not supported by any evidence and is contrary to the evidence;

(b) That there was no showing that respondent Exchange was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Exchange was in "commerce" within the meaning of Section 2 (6) of the Act, or affected commerce within the meaning of Section 2 (7) of the Act;

(c) There was no showing that respondent Boswell Company was within the jurisdiction of the Act or of the Board, and there was no showing that any act or activity of said respondent Boswell Company involved in this proceeding was in "commerce" within the meaning of Section 2 (6) of the

Act, or affected commerce within the meaning of Section 2 (7) of the Act; and

(d) That there was no showing that Margaret A. Dunn, who was the sole and only employee of respondent Exchange involved in this proceeding, came within any of the provisions of the Act or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

Respondents, and each of them, hereby reincorporate herein, as though restated herein in full, all of the exceptions to all Findings relating to all of the matters mentioned in said Finding No. 178.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 207.

Exception No. 208.

Respondents, and each of them, hereby except to Finding No. 179, page 89 of the Intermediate Report, and to every part and portion of said Finding, upon all of the grounds specified in Exception No. 207, which grounds and all thereof are hereby incorporated herein with the same effect as if restated herein in full.

Respondents, and each of them, specify the foregoing as Exception No. 208.

Exception No. 211.

Respondents, and each of them, hereby except to the whole of Finding No. 181, page 89 of the Intermediate Report, upon the ground that said Finding is unsupported by any evidence, and is contrary to the evidence, and upon the further ground that

there is no showing that any of the respondents are within the jurisdiction of the Act or of the Board, all of which has been more particularly set forth and shown in the exceptions to previous Findings.

Respondents, and each of them, specify the foregoing as Exception No. 211.

Exception No. 213.

Respondent Boswell Company hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Exchange, upon the ground that said portions of the Intermediate Report and record are, as to respondent Boswell Company, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Boswell Company to said respondent Exchange, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Boswell Company with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Exchange, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Boswell Company, no authority having been shown or established from said respondent Boswell Company

to said respondent Exchange, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Boswell Company with respect to any of the matters involved in this proceeding.

Respondent Boswell Company hereby specifies the foregoing as Exception No. 213.

Exception No. 216.

Respondent Exchange hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Boswell Company, upon the ground that said portions of the Intermediate Report and record are, as to respondent Exchange, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Exchange to said respondent Boswell Company, or to any of its officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Boswell Company, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Exchange, no authority having been shown or estab-

lished from said respondent Exchange to said respondent Boswell Company, or to any of its officers, agents or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Respondent Exchange hereby specifies the foregoing as Exception No. 216.

Exception No. 217.

Respondent Exchange hereby excepts to every portion of the Intermediate Report and the record herein which relates in any way to any act or activity, or to any alleged act or activity of respondent Associated Farmers, upon the ground that said portions of the Intermediate Report and record are, as to respondent Exchange, incompetent, irrelevant, and immaterial, no authority having been shown or established from said respondent Exchange to said respondent Associated Farmers, or to any of its members, officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Said respondent also hereby excepts to every portion of the Intermediate Report and the record herein relating in any way to any conversations, or alleged conversations, in conjunction with any act or activity, or alleged act or activity of respondent Associated Farmers, upon the ground that said portions of the Intermediate Report and record are hearsay and incompetent as to said respondent Ex-

change, no authority having been shown or established from said respondent Exchange to said respondent Associated Farmers, or to any of its members, officers, agents, or employees, to in any way act or speak for or on behalf of said respondent Exchange with respect to any of the matters involved in this proceeding.

Respondent Exchange hereby specifies the foregoing as Exception No. 217.

Exception No. 218.

Respondents, and each of them, hereby except to the rulings of the Trial Examiner preventing respondents from eliciting testimony relating to the identity of members of the Union, and identity of persons present at union meetings, concerning which testimony was introduced by the Board, as is hereinafter more particularly set forth.

Although the charge and amended complaint in this case alleged that respondent Boswell Company was discriminating against employees, or former employees, solely because of their union membership, the Trial Examiner repeatedly refused to permit respondents to elicit testimony relative to the identity of the members of the Union who were working or had worked for said respondent.

After the Union charter had been introduced in evidence by the Board, the Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question,

which was asked Prior (Tr. p. 99, line 24; p. 100, line 7):

“Q. (By Mr. Clark) Did those names, (referring to the names on the charter) in fact, constitute the entire membership of the Union on that day, namely, October 26, 1938?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 366, line 18, to p. 367, line 8):

“Q. . . . is he (referring to Joe Briley) still a member in good standing of your union?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 367, lines 10 to 14):

“Q. Is Mr. Briley a member of your organization?”

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question (Tr. p. 371, lines 6 and 9):

“Q. Isn't he (referring to Joe Briley) a member now?”

The proceedings which occurred at a union organization meeting held by Prior on July 13, 1938, were stated at great length over respondent's objection in the direct examination of Prior, who was called as a witness by the Board. Prior named six persons whom he testified were present at that meeting. On cross examination he was asked how many

of those persons, if any, ultimately became members of his union. An objection to this question, interposed by counsel for the Board, was overruled by the Trial Examiner, and the witness was instructed to answer, after which the following transpired (Tr. p. 405, line 19, to p. 406, line 19):

“A. (Prior) Your Honor, I can’t answer that question.

Q. Why not?

A. Quite often in my work in organizing I give my word to those who make application for membership that I will not divulge their names or give any indication that an employer might be able to ascertain who belongs or who does not belong to the union.

Q. Well, is it your testimony then, Mr. Witness, that any of the persons present at that union meeting, aside from Mr. Gilmore, became members of it?

Mr. Mouritsen: Objected to as incompetent, irrelevant and immaterial.

Mr. Clark: I will withdraw that question and simply ask the Examiner if this witness is going to be permitted, in effect, to refuse to answer a question to which an objection has been overruled.

Mr. Mouritsen: Mr. Examiner, in that regard, the question is regarding an immaterial matter that can only be a very collateral issue and has no bearing upon the case. I interposed my objection then and I desire to renew it at this time.

Trial Examiner Lindsay: Well, in view of the fact that there is not an A (5) charge in this complaint, he does not have to answer the question if he wants to insist upon relying on his confidential relationship between the members and himself."

Counsel for the Board elicited, over objection of respondents, testimony relating in some detail to proceedings which occurred at a union meeting on November 16, 1938. On cross examination, Martin (the secretary and treasurer of the union), was asked to name the persons present at that meeting. He testified that he could recall only six persons whom he named, but that about 18 or 20 were present. He was then asked whether he, as secretary, kept a record of the people in attendance at the meetings and he stated that he kept such a record. Respondents then demanded the production of the record showing the identity of the persons who were present at and participated in that meeting. Counsel for the Board objected to the production of such record and the Trial Examiner erroneously ruled as follows (Tr. p. 556, line 10, to p. 557, line 23):

"Trial Examiner Lindsay: Well, I understand that the records of the union are the union records. The objection is sustained."

The Trial Examiner erroneously sustained an objection, interposed by counsel for the Board, to the following question relating to persons present at a union meeting on November 16, 1938 (Tr. p. 558, lines 11 to 16):

“Q. Now, of those people present at that meeting, were they all members of your union?”

Counsel for the Board introduced testimony regarding certain action, including the declaration of a boycott against respondent Boswell Company, which allegedly occurred at a union meeting on November 19, 1938. On cross examination Spear was asked what members of the union attended that meeting, and testified that most of them attended. He was then asked “can you name them for us?” and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to that question (Tr. p. 965, lines 9 to 18).

Andrade, on cross examination, was asked whether he obtained applications for union membership for certain named individuals, and he denied having signed up certain of the individuals named. He was then asked whether any of those persons, in fact, became members of the union, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to that question (Tr. p. 1127, line 21, to p. 1128, line 23).

A notebook containing notations prepared by Martin was erroneously introduced in evidence for all purposes over the objections of respondents (Board’s Exhibit No. 17; Tr. p. 1750). One of the memoranda contained in such notebook set forth the names of certain persons under the headings, “Union members laid off before the lockout November 18, 1938” and “Union members forced off

the job November 18, 1938". On cross examination, Martin was asked whether those names constituted the entire membership of the union on that day and the Trial Examiner sustained an objection interposed by counsel for the Board to said question (Tr. p. 1753, line 24, to p. 1754, line 18).

The Trial Examiner erroneously sustained an objection interposed by counsel for the Board, to the following question (Tr. p. 1754, line 20, to p. 1755, line 5):

"Q. Is there any member of your union, or was there any person who belonged to your union on November 18, 1938, who was not either laid off prior to that time or forced off on that day?"

On cross examination, Martin was asked whether certain named persons who were still performing work for respondent Boswell Company had refused to take part in the boycott against said respondent, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to said question. Some of the persons named in said question had been previously shown to be charter members of the union (Tr. p. 1756, lines 3 to 11).

Contrasted with the foregoing rulings of the Trial Examiner, he erroneously overruled objections by respondents to testimony by Prior relating to the objectives and purposes of the union. Respondents duly objected on the ground that the charter or by-laws was the best evidence of the objectives or purposes, and that Prior was not qualified to testify

since he was not a member of the union. The Trial Examiner also erroneously overruled a motion to strike out the testimony of Prior above referred to, upon the same grounds (Tr. p. 106, line 12, to p. 107, line 20).

Also, the Trial Examiner erroneously overruled objections interposed by respondents to testimony relating to the manner of electing Union officers and setting up the Union's constitution and bylaws, the committees of the Union, and the method of selection of members of committees. Respondents objected to the foregoing testimony upon the ground that the questions calling for this testimony were vague and indefinite, the employees referred to, or the members of the union, were not identified, and upon the ground that this proceeding concerned only employees of respondent Boswell Company (Tr. p. 108, line 3, to p. 109, line 15).

At the hearing, respondents excepted to each of the foregoing rulings and do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 218.

Exception No. 219.

Prior testified that one of his organizational activities consisted of the filing, on or about July 17, 1938, of an 8 (1) charge against respondent Boswell Company with the Board, and that this charge had been subsequently withdrawn in September or October 1938. The record shows that this charge was never served on any of the respondents; that it was apparently based solely upon alleged discrimination

against Gilmore; and that said charge was not offered or introduced in evidence by the Board at the time of the hearing, although certain other charges which were later filed with the Board but which were never served upon any of the respondents were admitted in evidence. Respondents, for the purpose of testing the credibility of Prior and comparing his previous sworn charge of July 18, 1938, with the later charges, demanded that either an original or copy of said charge be produced. The Trial Examiner erroneously sustained the objections interposed by Board's counsel to such demand (Tr. pp. 400-1, 410-11).

When Prior was asked to state what knowledge he had of conditions at the Boswell Company at the time he filed said charge, the Trial Examiner erroneously sustained an objection to said question (Tr. p. 401, lines 11 to 16).

Prior was then asked whether he had made an actual investigation of conditions at the Boswell plant at the time said charge was filed, and the Trial Examiner erroneously sustained an objection to said question (Tr. p. 402, lines 1 to 6).

Prior was asked by respondents to tell, in his own words, the substance of said charge, and the Trial Examiner erroneously sustained an objection interposed by counsel for the Board to said question (Tr. p. 427, line 25, to p. 428, line 7).

Prior was also asked to state by whose authority said charge was later withdrawn, and the Trial Examiner erroneously sustained an objection interposed by counsel for the board to said question (Tr. p. 488).

Respondents, and each of them, at the time of the hearing duly excepted to each of the foregoing rulings and do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 219.

Exception No. 221.

Upon the conclusion of the Board's alleged case against the Exchange, a motion was made on behalf of the Exchange to strike all of the testimony adduced on behalf of the Board purportedly in support of the complaint against the Exchange, upon the ground that the Board had no jurisdiction over the business or corporation in that it had not been shown that it is engaged in interstate commerce nor that the conduct of the business in any manner affects interstate commerce; and upon the further ground that there had been no showing in the case that Mrs. Dunn is a person who ever joined a labor organization or assisted one, or in any manner attempted to assist one, and that, therefore, she is not a person to whom the rights referred to in Section 7 of the Act was secured. This motion was taken under advisement by the Trial Examiner (Tr. p. 2918-19), and was denied in the Intermediate Report (line 11, page 7 of the Report).

Respondent Exchange hereby excepts to the denial of said motion and specifies such denial as Exception No. 221.

Exception No. 222.

Respondents, and each of them, hereby except to the erroneous rulings of the Trial Examiner ad-

mitting into evidence over the objections of said respondents the following specified exhibits, offered in evidence by the Board.

Before the introduction of evidence in support of the Board's alleged case against said respondent Associated Farmers, objection was duly interposed by all respondents to the reception of any evidence under the complaint affecting said respondent Associated Farmers, upon the ground that no jurisdiction was shown in the Board with respect to said respondent Associated Farmers, or any activities of said respondent. Said objection was erroneously overruled, and the Trial Examiner erroneously permitted the introduction of such evidence (Tr. pp. 1298-9).

Said respondents, and each of them, duly objected to the introduction of Board's Exhibit No. 9, consisting of the Articles of Incorporation of respondent Associated Farmers (Tr. p. 1396); Board's Exhibit No. 10, consisting of the bylaws of respondent Associated Farmers (Tr. p. 1397); Board's Exhibit No. 11, consisting of a list of members of respondent Associated Farmers (Tr. p. 1399); and Board's Exhibits Nos. 14-A, 14-B, and 14-C, which exhibits consisted of financial statements of respondent Associated Farmers (Tr. p. 1407), upon the grounds urged in the previous objection to the jurisdiction of the Board over said respondent Associated Farmers. The Trial Examiner erroneously overruled said objections, and erroneously received said exhibits hereinabove mentioned in evidence.

Said respondents duly objected to the admission in evidence of Board's Exhibit No. 12, consisting of the minutes of respondent Associated Farmers for the directors meeting of January 26, 1939, (Tr. p. 1400), upon the ground that said exhibit was incompetent, irrelevant, and immaterial; and the Trial Examiner erroneously received Board's Exhibit No. 12 in evidence (Tr. pp. 1400-1401).

Said respondents, and each of them, duly objected to the admission in evidence of Board's Exhibits Nos. 13-A, 13-B, 13-C, and 13-D. Exhibits Nos. 13-A and 13-C consisted of pamphlets prepared by said respondent Associated Farmers, and Exhibits Nos. 13-B and 13-D consisted of pamphlets prepared by Associated Farmers of California. Respondents, and each of them, objected to the admission of evidence of said exhibits upon the ground that they were incompetent, irrelevant and immaterial. The Trial Examiner erroneously received said Exhibits in evidence (Tr. p. 1403).

Said respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 15, consisting of the reprint of an editorial from the Tulare Times, dated February 10, 1939, given by Forrest Riley to some of the pickets at the Boswell plant, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, that it was hearsay as to all respondents, since no connection was shown between Mr. Riley and any of the respondents which would in any manner authorize him to make any of the statements contained therein or deliver any such literature to any one, and upon the

ground that said exhibit was outside the issues framed by the pleadings in this proceeding, since Mr. Riley was not named as a party. The Trial Examiner erroneously received said Board's Exhibit No. 15 in evidence over the objections of said respondents, as aforesaid (Tr. p. 1561).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 17, which consisted of a notebook containing memoranda prepared by R. K. Martin, relating to some of the matters concerning which he testified, as well as other matters. Said respondents objected to the admission of said exhibit in evidence upon the ground that it was hearsay, self serving, not probative of any issue in this proceeding, except for the limited purpose for which said document had previously been introduced in evidence. The Trial Examiner erroneously received said Board's Exhibit No. 17 in evidence for all purposes (Tr. p. 1750).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 18, which consisted of the bylaws of the Independent, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, not binding on any of the respondents, and upon the ground that it was hearsay as to all respondents and was not probative of any of the issues as between any of the respondents and the Board. The Trial Examiner erroneously received Board's Exhibit No. 18 in evidence (Tr. pp. 1911-12).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 19,

consisting of a list of persons alleged to have been present at a meeting of employees held on the evening of November 18, 1938, upon the grounds that said exhibit was incompetent, irrelevant and immaterial, and hearsay as to all respondents. The Trial Examiner erroneously received said exhibit in evidence (Tr. p. 1919).

Respondents, and each of them, duly objected to the introduction in evidence of Board's Exhibit No. 21, consisting of a telegram from Margaret A. Dunn to Alice M. Rossiter, upon the same grounds as the general objection previously made on behalf of all respondents to the introduction of any testimony relating to the alleged case against respondent Exchange. The Trial Examiner erroneously received said exhibit in evidence (Tr. p. 2046).

Respondent Boswell Company duly objected to the admission in evidence of Board's Exhibit No. 24, consisting of a letter from Louis T. Robinson to J. G. Boswell Company, Los Angeles, California, dated November 18, 1938; and Board's Exhibit No. 25, consisting of a memorandum from Gordon L. Hammond to Louis T. Robinson, dated November 19, 1938; and Board's Exhibit No. 26, consisting of a letter from Fred G. Sherrill to J. G. Boswell Company, Corcoran, California, dated November 25, 1938, upon the grounds that no showing had been made which established any violation of the Act by said respondent, or on the part of any one authorized to bind said respondent.

Respondents Associated Farmers and Exchange,

and each of them, duly objected to the introduction of said Board's Exhibits Nos. 24, 25 and 26 in evidence, upon the grounds that said exhibits were hearsay and incompetent, irrelevant, and immaterial, and in no way binding upon either of those respondents, since no authority was shown in Louis Robinson, Gordon Hammond, or Fred G. Sherrill, or any of them, to speak for either of said respondents with respect to any of the matters under investigation in this proceeding.

The Trial Examiner erroneously received said Board's Exhibits Nos. 24, 25, and 26, in evidence (Tr. pp. 2138-9).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 27, consisting of a letter from the Independent, signed by J. W. Hubbard and E. M. Roberson, addressed to respondent Boswell Company, dated November 29, 1938, and Board's Exhibit No. 28, consisting of a letter dated April 15, 1939, addressed to respondent Boswell Company and signed by H. G. McKeever, Secretary, upon the ground that said letters were hearsay and incompetent, irrelevant, and immaterial, and not binding upon any of the respondents. The Trial Examiner erroneously received said Board's Exhibits Nos. 27 and 28 in evidence (Tr. p. 2140).

Respondents, and each of them, duly objected to the admission in evidence of Board's Exhibit No. 30, consisting of an application blank used by respondent Associated Farmers, upon the ground that said exhibit was incompetent, irrelevant and immaterial.

The Trial Examiner erroneously received said Board's Exhibit No. 30 in evidence (Tr. p. 2372).

Respondents Boswell Company and Exchange duly objected to the admission in evidence of Board's Exhibit No. 31, consisting of a check signed by J. B. Boyett, payable to Pacific Tent and Awning Company, upon the ground that said exhibit was hearsay as to said respondents.

Respondent Associated Farmers duly objected to the admission in evidence of said Board's Exhibit No. 31, upon the ground that it was incompetent, irrelevant, immaterial, and upon the ground that no connection was shown between said check and any of the matters involved in this proceeding.

The Trial Examiner erroneously received said Board's Exhibit No. 31 in evidence (Tr. p. 2378).

Respondents, and each of them, duly excepted at the time of the hearing to each of the foregoing rulings by the Trial Examiner, and said respondents, and each of them, do hereby except thereto.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 222.

Exception No. 223.

Respondents, and each of them, hereby except to Conclusions Nos. 1, 2, and 3, pages 90 and 91 of the Intermediate Report, and to each and every portion of each of such conclusions, upon the following grounds, to wit:

(a) That said Conclusions, and each and every portion of each thereof, are not supported by any evidence and are contrary to the evidence, as is par-

ticularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Conclusions, and each and every portion of each thereof, are not supported by and are contrary to the Findings.

(c) That no showing was made that respondent Boswell Company was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(d) That no showing was made that respondent Boswell Company was involved in any way in any "labor disputes" within the meaning of the Act.

(e) That no showing was made that any of the men mentioned in said Conclusions ceased work "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(f) That said Conclusions, and each thereof, are based upon and are the result of bias and prejudice against all of the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 223.

Exception No. 225.

Respondents, and each of them, hereby except to Conclusions Nos. 5, 6, and 7, page 92 of the Intermediate Report, and to each and every portion of each of such Conclusions, upon the following grounds, to wit:

(a) That said Conclusions, and each and every portion of each thereof, are not supported by any evidence and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Conclusions, and each and every portion of each thereof, are not supported by and are contrary to the Findings.

(c) That no showing was made that respondent Exchange was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(d) That no showing was made that the employment of Margaret A. Dunn ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(e) That there was no showing that Margaret A. Dunn, who was the sole and only employee of respondent Exchange involved in this proceeding, came within the scope of the Act, or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

(f) That there was no showing that respondent Boswell Company was within the jurisdiction of the Act, or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(g) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company, with re-

spect to any of the matters involved in this proceeding.

(h) That said Conclusions, and each thereof, are based upon and are the result of bias and prejudice against all of the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 225.

Exception No. 226.

Respondents, and each of them, hereby except to Recommendations Nos. 1, 2 (a) and (b), of the Intermediate Report, and each and every portion of each of said Recommendations, upon the following grounds; to-wit:

(a) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by any evidence, and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Conclusions, and are contrary to the Conclusions.

(d) That no showing was made that respondent Boswell Company ever did any of the acts, or engaged in any of the activities, which the Trial Ex-

aminer recommends in said Recommendations that said respondent "cease and desist" from doing.

(e) That no showing was made that respondent Boswell Company was within the jurisdiction of the Act, or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That said Recommendations, and each thereof, are based on and are the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 226.

Exception No. 228.

Respondents, and each of them, hereby except to Recommendations Nos. 4 and 5 of the Intermediate Report, and to each and every portion of each of such Recommendations, upon the following grounds, to wit:

(a) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by any evidence, and are contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendations, and each and every portion of each thereof, are not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendations, and each and every portion of each thereof, are not supported,

warranted, or justified by the Conclusions, and are contrary to the Conclusions.

(d) That no showing was made that respondent Exchange ever did any of the acts, or engaged in any of the activities, which the Trial Examiner recommends in said Recommendations that said respondent "cease and desist" from doing.

(e) That no showing was made that respondent Exchange was within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That no showing was made that Margaret A. Dunn, who was the sole and only employee of Respondent Exchange involved in this proceeding, came within the scope of the Act, or that she was in any way entitled to any of the benefits or remedies conferred by the Act.

(g) That no showing was made that the employment of Margaret A. Dunn ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(h) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company with respect to any of the matters involved in this proceeding.

(i) That said Recommendations, and each thereof, are based on and are the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 228.

Exception No. 229.

Respondents, and each of them, hereby except to Recommendation No. 6, subdivisions (a) to (h), inclusive, of the Intermediate Report, and to each and every portion of said Recommendation from the commencement thereof down to and including line 4, page 96 of the Intermediate Report upon the following grounds, to wit:

(a) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by any evidence, and is contrary to the evidence, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(b) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by the Findings, and are contrary to the Findings.

(c) That said Recommendation, and each and every portion thereof, is not supported, warranted, or justified by the Conclusions, and is contrary to the Conclusions.

(d) That no showing was made that said respondents, or any of them, were involved in any way in any "labor dispute" within the meaning of the Act, or that the employment of any of the persons involved in this proceeding ceased "as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice."

(e) That no showing was made that said respondents, or any of them were within the jurisdiction of the Act or of the Board, as is particularly set forth and shown in the foregoing exceptions to the Findings, and as shown by the record herein.

(f) That no showing was made that respondent Exchange acted, either directly or indirectly, in the interest of respondent Boswell Company with respect to any of the matters involved in this proceeding.

(g) That no showing was made that respondent Boswell Company acted, either directly or indirectly, in the interest of respondent Exchange, with respect to any of the matters involved in this proceeding.

(h) That no showing was made that respondent Associated Farmers acted, either directly or indirectly, in the interest of respondent Boswell Company or in the interest of respondent Exchange with respect to any of the matters involved in this proceeding.

(i) That no showing was made that any of the respondents ever did any of the acts, or engaged in any of the activities, which the Trial Examiner recommends in said Recommendation that said respondents "cease and desist" from doing.

(j) That said Recommendation, and each and every portion thereof, is based on and is the result of bias and prejudice against all the respondents on the part of the Trial Examiner.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 229.

Exception No. 230.

Respondents, and each of them, also hereby except to Subdivisions (a), (b), (c), and (d) of Recommendation 6, of the Intermediate Report and each and every portion of said subdivisions, upon the following grounds, to wit:

(a) That there was no showing that at any of the times here in question, after the employment of the persons named in said recommendation ceased, that there was work available at the Boswell Company plant for which any of said persons were qualified or at which any of said persons could have been employed.

(b) That it affirmatively appears from the record that during 1938 and after the employment of James W. Gilmore by respondent Boswell Company ceased, that he secured other regular employment which was substantially equivalent to his former employment by said respondent (Tr. pp. 1268-1270).

(c) That it affirmatively appears from the record that after the employment of Boyd Ely by respondent Boswell Company ceased, he secured other regular and substantially equivalent employment (Tr. pp. 1169-1170).

(d) That no showing was made that Walter Winslow had not obtained other regular and substantially equivalent employment since his employment by respondent Boswell Company ceased.

(e) That it affirmatively appears from the record that in February 1939 an operation was performed on W. R. Johnston's leg, as a result of an injury previously sustained by him during one of

the periods in 1938 when he was engaged in the performance of seasonal work for the respondent Boswell Company; that at the time of the hearing in this proceeding Johnston was incapacitated as a result of said operation and unable to do any type of work; that this disability had existed at all times after his operation and that he received workmen's compensation payments as provided by law during all of that period and was receiving them at the time of the hearing.

That it also affirmatively appears from the record that after his employment by respondent Boswell Company ceased, Johnston secured other regular and substantially equivalent employment (Tr. p. 2352).

(f) That it affirmatively appears from the record that, after the employment of Stephen Griffen by respondent Boswell Company ceased, he secured other regular and substantially equivalent employment (Tr. pp. 1297-8).

(g) That it affirmatively appears from the record that, after the employment of O. L. Farr by respondent Boswell Company ceased, he received other regular and substantially equivalent employment (Tr. p. 2352).

(h) That it affirmatively appears from the record that, shortly after the employment of E. C. Powell by respondent Boswell Company ceased, he had one of his fingers amputated because of an injury previously received while working. He was given a disability rating by the Industrial Accident Commis-

sion, and awarded compensation for a period of 63 weeks (Tr. pp. 696-7).

(i) That it affirmatively appears from the record that L. E. Ely testified that he was not willing to accept reemployment by respondent J. G. Boswell Company at the same hours and pay received by him during the time he was employed by said Company (Tr. pp. 1212 to 1214).

Respondents, and each of them, hereby specify all the foregoing as Exception No. 230.

Exception No. 231.

Respondents, and each of them, hereby except to the hereinafter specified rulings of the Trial Examiner, overruling objections interposed by respondents at the hearing in this proceeding. Each of said objections was erroneously overruled by the Trial Examiner and respondents duly excepted thereto, and do hereby except thereto. The objections and rulings herein referred to appear in the following portions of the transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full:

Tr. p. 61, line 20, to p. 62, line 4.

Tr. p. 62, line 17, to p. 62, line 22.

Tr. p. 67, lines 4 to 16.

Tr. p. 69, line 22 to p. 70, line 4.

Tr. p. 70, line 18, to p. 71, line 19.

Tr. p. 76, line 4, to p. 77, line 7.

Tr. p. 80, lines 12 to 16.

Tr. p. 91, line 15, to p. 92, line 16.

Tr. p. 118, lines 19 to 26.

- Tr. p. 129, lines 6 to 12.
Tr. p. 129, line 25, to p. 130, line 3.
Tr. p. 148, lines 1 to 8.
Tr. p. 149, line 22, to p. 150, line 6.
Tr. p. 151, lines 1 to 7.
Tr. p. 152, lines 2 to 6.
Tr. p. 154, line 22 to p. 155, line 1.
Tr. p. 156, lines 4 to 9.
Tr. p. 158, lines 3 to 11.
Tr. p. 163, lines 6 to 10.
Tr. p. 164, lines 13 to 19.
Tr. p. 165, line 22, to p. 166, line 23.
Tr. p. 167, lines 13 to 17.
Tr. p. 168, line 16, to p. 169, line 2.
Tr. p. 169, lines 12 to 16.
Tr. p. 211, line 25, to p. 212, line 4.
Tr. p. 218, line 25, to p. 219, line 9.
Tr. p. 221, line 22, to p. 222, line 2.
Tr. p. 229, line 13 to p. 230, line 3.
Tr. p. 270, line 25, to p. 271, line 8.
Tr. p. 274, line 18, to p. 275, line 11.
Tr. p. 276, lines 10 to 18.
Tr. p. 280, line 16, to p. 281, line 6.
Tr. p. 288, line 13, to p. 289, line 1.
Tr. p. 289, line 21, to p. 290, line 1.
Tr. p. 291, line 25, to p. 292, line 12.
Tr. p. 293, line 23, to p. 294, line 8.
Tr. p. 525, lines 2 to 5.
Tr. p. 526, lines 6 to 12.
Tr. p. 527, lines 15 to 18.
Tr. p. 528, lines 11 to 14.
Tr. p. 530, lines 10 to 22.

- Tr. p. 530, line 24 to p. 531, line 4.
Tr. p. 533, lines 1 to 6.
Tr. p. 536, lines 6 to p. 537, line 4.
Tr. p. 538, lines 14 to 25.
Tr. p. 569, line 16, to p. 570, line 17.
Tr. p. 571, lines 4 to 15.
Tr. p. 572, lines 1 to 21.
Tr. p. 575, lines 1 to 6.
Tr. p. 575, lines 15 to 25.
Tr. p. 595, line 25, to p. 596, line 12.
Tr. p. 597, lines 16 to 25.
Tr. p. 598, lines 13 to 19.
Tr. p. 600, line 17, to p. 601, line 4.
Tr. p. 609, lines 2 to 17.
Tr. p. 611, line 17 to p. 612, line 2.
Tr. p. 613, line 25 to p. 614, line 4.
Tr. p. 618, line 23 to p. 619, line 3.
Tr. p. 620, lines 2 to 7.
Tr. p. 620, line 22 to p. 621, line 4.
Tr. p. 621, line 24 to p. 622, line 6.
Tr. p. 624, line 14 to p. 625, line 8.
Tr. p. 625, lines 11 to 16.
Tr. p. 626, lines 6 to 21.
Tr. p. 627, lines 1 to 4.
Tr. p. 829, line 19 to p. 830, line 7.
Tr. p. 831, lines 6 to 13.
Tr. p. 831, lines 17 to 22.
Tr. p. 832, lines 6 to 11.
Tr. p. 833, line 24 to p. 834, line 12.
Tr. p. 835, lines 5 to 10.

Tr. p. 859, line 18 to p. 860, line 1.

Tr. p. 861, lines 16 to 20.

Tr. p. 863, lines 11 to 16.

Tr. p. 863, line 25 to p. 864, line 3.

Tr. p. 864, lines 16 to 21.

Tr. p. 864, line 24 to p. 865, line 2.

Tr. p. 865, lines 5 to 8.

Tr. p. 865, line 25 to p. 866, line 20.

Tr. p. 872, line 25 to p. 873, line 3.

Tr. p. 876, lines 7 to 12.

Tr. p. 876, lines 17 to 20.

Tr. p. 876, line 21 to p. 877, line 3.

Tr. p. 877, lines 18 to 23.

Tr. p. 878, line 16 to p. 879, line 5.

Tr. p. 879, lines 13 to 18.

Tr. p. 879, line 22 to p. 880, line 1.

Tr. p. 880, lines 9 to 12.

Tr. p. 880, line 25 to p. 881, line 2.

Tr. p. 881, lines 4 to 10.

Tr. p. 882, line 23 to p. 883, line 3.

Tr. p. 883, lines 9 to 18.

Tr. p. 883, line 21 to p. 884, line 1.

Tr. p. 884, line 22 to p. 885, line 3.

Tr. p. 905, lines 16 to 25.

Tr. p. 906, lines 18 to 21.

Tr. p. 984, lines 9 to 13.

Tr. p. 998, lines 1 to 6.

Tr. p. 999, lines 3 to 8.

Tr. p. 1000, lines 6 to 21.

Tr. p. 1003, lines 8 to 15.

Tr. p. 1004, line 23 to p. 1005, line 4.

Tr. p. 1006, line 5 to 1007, line 3.

- Tr. p. 1038, lines 8 to 14.
Tr. p. 1040, lines 12 to 16.
Tr. p. 1045, lines 19 to 24.
Tr. p. 1046, lines 19 to 21.
Tr. p. 1047, lines 6 to 11.
Tr. p. 1048, lines 6 to 9.
Tr. p. 1050, lines 10 to 13.
Tr. p. 1050, lines 16 to 18.
Tr. p. 1050, line 25 to p. 1051, line 3.
Tr. p. 1051, lines 18 to 23.
Tr. p. 1054, line 23 to p. 1055, line 14.
Tr. p. 1062, lines 14 to 20.
Tr. p. 1064, lines 3 to 7.
Tr. p. 1064, lines 13 to 19.
Tr. p. 1067, lines 1 to 8.
Tr. p. 1068, line 23 to p. 1069, line 6.
Tr. p. 1080, lines 7 to 14.
Tr. p. 1081, lines 2 to 7.
Tr. p. 1086, lines 20 to 23.
Tr. p. 1152, lines 14 to 21.
Tr. p. 1153, lines 9 to 13.
Tr. p. 1159, lines 6 to 10.
Tr. p. 1159, lines 17 to 19.
Tr. p. 1160, lines 22 to 25.
Tr. p. 1161, line 25 to p. 1162, line 4.
Tr. p. 1162, lines 10 to 13.
Tr. p. 1163, lines 13 to 20.
Tr. p. 1194, lines 7 to 17.
Tr. p. 1195, lines 9 to 12.
Tr. p. 1195, lines 19 to 22.
Tr. p. 1197, line 25 to p. 1196, line 5.
Tr. p. 1198, lines 14 to 24.

- Tr. p. 1201, lines 1 to 6.
Tr. p. 1202, lines 12 to 19.
Tr. p. 1203, lines 8 to 12.
Tr. p. 1210, lines 7 to 11.
Tr. p. 1210, lines 23 to 25.
Tr. p. 1265, line 20 to p. 1266, line 4.
Tr. p. 1288, line 15 to p. 1289, line 16.
Tr. p. 1292, lines 9 to 17.
Tr. p. 1294, lines 15 to 24.
Tr. p. 1301, lines 6 to 19.
Tr. p. 1301, lines 20 to 26.
Tr. p. 1302, lines 2 to 5.
Tr. p. 1302, lines 11 to 17.
Tr. p. 1303, lines 17 to 20.
Tr. p. 1304, lines 9 to 13.
Tr. p. 1304, lines 15 to 18.
Tr. p. 1305, lines 3 to 15.
Tr. p. 1306, line 9 to p. 1307, line 18.
Tr. p. 1310, lines 16 to 24.
Tr. p. 1311, lines 12 to 22.
Tr. p. 1312, lines 8 to 11.
Tr. p. 1312, line 19 to p. 1313, line 25.
Tr. p. 1315, lines 4 to 8.
Tr. p. 1325, lines 15 to 20.
Tr. p. 1327, lines 2 to 7.
Tr. p. 1355, lines 12 to 17.
Tr. p. 1355, line 22 to p. 1356, line 1.
Tr. p. 1357, lines 8 to 11.
Tr. p. 1358, line 25 to p. 1359, line 5.
Tr. p. 1362, lines 19 to 23.
Tr. p. 1363, lines 4 to 7.
Tr. p. 1365, lines 4 to 12.

- Tr. p. 1366, line 22 to p. 1367, line 1.
Tr. p. 1397, line 21 to p. 1398, line 1.
Tr. p. 1400, lines 12 to 19.
Tr. p. 1411, lines 9 to 14.
Tr. p. 1426, line 3 to p. 1427, line 19.
Tr. p. 1437, line 9 to p. 1438, line 2.
Tr. p. 1438, lines 5 to 10.
Tr. p. 1439, line 25 to p. 1440, line 4.
Tr. p. 1440, lines 7 to 10.
Tr. p. 1446, line 1 to p. 1447, line 1.
Tr. p. 1447, lines 13 to 17.
Tr. p. 1447, line 21 to p. 1448, line 2.
Tr. p. 1448, lines 4 to 8.
Tr. p. 1452, line 16 to p. 1453, line 1.
Tr. p. 1459, line 25 to p. 1460, line 20.
Tr. p. 1461, line 16 to p. 1462, line 4.
Tr. p. 1496, lines 10 to 22.
Tr. p. 1511, lines 1 to 16.
Tr. p. 1525, line 18 to p. 1526, line 5.
Tr. p. 1573, line 21 to p. 1574, line 8.
Tr. p. 1604, line 19 to p. 1605, line 12.
Tr. p. 1610, lines 10 to 17.
Tr. p. 1610, line 24 to p. 1611, line 1.
Tr. p. 1618, lines 17 to 22.
Tr. p. 1619, lines 10 to 16.
Tr. p. 1634, line 22, to p. 1635, line 4.
Tr. p. 1639, lines 8 to 14.
Tr. p. 1649, lines 17 to 23.
Tr. p. 1662, lines 9 to 17.
Tr. p. 1663, lines 3 to 8.
Tr. p. 1664, lines 5 to 7.
Tr. p. 1676, lines 2 to 21.

- Tr. p. 1676, lines 1 to 23.
Tr. p. 1678, lines 14 to 19.
Tr. p. 1679, lines 15 to 21.
Tr. p. 1679, line 25 to p. 1680, line 2.
Tr. p. 1682, lines 1 to 8.
Tr. p. 1682, line 17 to p. 1683, line 5.
Tr. p. 1686, lines 2 to 6.
Tr. p. 1687, line 24 to p. 1688, line 10.
Tr. p. 1697, line 16, to p. 1698, line 7.
Tr. p. 1699, lines 12 to 25.
Tr. p. 1725, line 7.
Tr. p. 1762, lines 17 to 24.
Tr. p. 1763, line 5 to p. 1764, line 8.
Tr. p. 1775, lines 4 to 9.
Tr. p. 1776, lines 4 to 8.
Tr. p. 1786, line 24 to p. 1787, line 5.
Tr. p. 1795, lines 3 to 8.
Tr. p. 1808, line 20 to p. 1809, line 1.
Tr. p. 1820, lines 14 to 21.
Tr. p. 1824, lines 11 to 19.
Tr. p. 1832, line 12 to p. 1833, line 9.
Tr. p. 1833, line 22 to p. 1834, line 15.
Tr. p. 1840, line 24 to p. 1841, line 8.
Tr. p. 1848, line 24 to p. 1849, line 9.
Tr. p. 1856, lines 3 to 10.
Tr. p. 1856, lines 11 to 20.
Tr. p. 1858, lines 1 to 5.
Tr. p. 1858, line 19 to p. 1859, line 6.
Tr. p. 1865, lines 9 to 13.
Tr. p. 1865, line 24 to p. 1866, line 3.
Tr. p. 1866, lines 19 to 25.
Tr. p. 1867, lines 5 to 11.

- Tr. p. 1876, lines 21 to 24.
Tr. p. 1883, lines 10 to 19 ; lines 23 to 25.
Tr. p. 1887, lines 16 to 20.
Tr. p. 1907, line 19 to p. 1908, line 6.
Tr. p. 1924, line 23 to p. 1925, line 2.
Tr. p. 1928, lines 6 to 21.
Tr. p. 1939, lines 8 to 17.
Tr. p. 2004, line 19 to p. 2005, line 4.
Tr. p. 2006, lines 3 to 20.
Tr. p. 2007, lines 12 to 25.
Tr. p. 2017, lines 10 to 20.
Tr. p. 2018, lines 10 to 17.
Tr. p. 2037, lines 18 to 25.
Tr. p. 2038, line 1 to p. 2039, line 2.
Tr. p. 2039, lines 9 to 11.
Tr. p. 2041, line 24 to p. 2041, line 13.
Tr. p. 2042, lines 4 to 11.
Tr. p. 2043, lines 19 to 23.
Tr. p. 2044, line 24 to p. 2045, line 4.
Tr. p. 2048, lines 6 to 13.
Tr. p. 2049, lines 8 to 14.
Tr. p. 2050, lines 16 to 18.
Tr. p. 2051, lines 9 to 17.
Tr. p. 2053, lines 15 to 18.
Tr. p. 2055, lines 13 to 18 ; lines 20 to 24.
Tr. p. 2214, lines 4 to 10.
Tr. p. 2217, lines 2 to 11.
Tr. p. 2218, lines 7 to 12.
Tr. p. 2232, lines 9 to 12.
Tr. p. 2252, lines 5 to 14.
Tr. p. 2272, line 3 to p. 2273, line 1.

- Tr. p. 2281, lines 9 to 19.
Tr. p. 2282, line 10 to p. 2283, line 2.
Tr. p. 2285, lines 3 to 18.
Tr. p. 2288, lines 4 to 7.
Tr. p. 2288, line 20 to p. 2289, line 17.
Tr. p. 2293, line 21.
Tr. p. 2309, lines 5 to 16.
Tr. p. 2312, line 4 to p. 2313, line 20.
Tr. p. 2317, line 24 to p. 2318, line 13.
Tr. p. 2319, line 19 to p. 2320, line 3.
Tr. p. 2320, line 5 to p. 2321, line 3.
Tr. p. 2321, line 24 to p. 2322, line 12.
Tr. p. 2326, lines 18 to 23.
Tr. p. 2343, lines 1 to 12.
Tr. p. 2390, lines 14 to 17.
Tr. p. 2453, lines 9 to 22.
Tr. p. 2454, lines 3 to 7.
Tr. p. 2456, line 4 to p. 2457, line 5.
Tr. p. 2463, lines 3 to 9.
Tr. p. 2473, lines 11 to 16.
Tr. p. 2474, lines 13 to 18.
Tr. p. 2484, lines 11 to 18.
Tr. p. 2487, lines 1 to 16.
Tr. p. 2668, line 18 to p. 2669, line 8.
Tr. p. 2678, line 16 to p. 2679, line 3.
Tr. p. 2679, lines 7 to 12.
Tr. p. 2731, line 23 to p. 2732, line 6.
Tr. p. 2733, line 24 to p. 2734, line 17.
Tr. p. 2734, line 26 to p. 2735, line 4.
Tr. p. 2735, lines 12 to 20.
Tr. p. 2736, lines 5 to 11.
Tr. p. 2738, lines 6 to 12.

Tr. p. 2746, lines 15 to 25.

Tr. p. 2748, line 22 to p. 2749, line 2.

Tr. p. 2750, lines 6 to 10.

Tr. p. 2914, line 23 to p. 2915, line 2.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 231.

Exception No. 232.

Respondents, and each of them, hereby except to the hereinafter specified erroneous rulings of the Trial Examiner sustaining objections interposed by counsel for the Board at the hearing in this proceeding. Respondents duly excepted to and do hereby except to each and all of said rulings. The objections and rulings herein referred to and to which exception is taken appear in the following portions of the transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full.

Tr. p. 331, lines 7 to 12.

Tr. p. 395, lines 15 to 20.

Tr. p. 448, lines 13 to 24.

Tr. p. 452, lines 20 to 24.

Tr. p. 512, lines 21 to 25.

Tr. p. 698, lines 20 to 23.

Tr. p. 762, lines 17 to 19.

Tr. p. 764, lines 10 to 17.

Tr. p. 773, line 21 to p. 774, line 5.

Tr. p. 822, lines 15 to 24.

Tr. p. 942, line 16 to p. 943, line 9.

Tr. p. 941, line 23 to p. 942, line 6.

Tr. p. 954, lines 13 to 16.

Tr. p. 965, line 20 to p. 966, line 2.

Tr. p. 968, lines 5 to 8.

Tr. p. 978, lines 10 to 15.

Tr. p. 978, line 17 to p. 979, line 5.

Tr. p. 979, line 6 to p. 980, line 2.

Tr. p. 1028, lines 12 to 17.

Tr. p. 1104, lines 8 to 13.

Tr. p. 1105, lines 2 to 7.

Tr. p. 1105, lines 19 to 23.

Tr. p. 1106, lines 20 to 25.

Tr. p. 1108, lines 10 to 14.

Tr. p. 1111, line 12 to p. 1112, line 6.

Tr. p. 1115, lines 3 to 9.

Tr. p. 1116, line 21 to p. 1117, line 3.

Tr. p. 1136, lines 8 to 14.

Tr. p. 1136, line 22 to p. 1137, line 11.

Tr. p. 1137, lines 13 to 22.

Tr. p. 1137, line 23 to p. 1138, line 11.

Tr. p. 1138, lines 14 to 19.

Tr. p. 1143, lines 15 to 21.

Tr. p. 1143, line 22 to p. 1144, line 1.

Tr. p. 1154, lines 15 to 19.

Tr. p. 1182, lines 21 to 23.

Tr. p. 1187, lines 14 to 18.

Tr. p. 1187, lines 7 to 13.

Tr. p. 1213, line 25 to p. 1214, line 7.

Tr. p. 1228, lines 14 to 23.

Tr. p. 1235, lines 1 to 11.

Tr. p. 1236, line 22 to p. 1237, line 4.

Tr. p. 1240, lines 3 to 11.

Tr. p. 1250, lines 10 to 14.

Tr. p. 1250, lines 17 to 23.

Tr. p. 1340, lines 3 to 10.

Tr. p. 1350, lines 7 to 10.

Tr. p. 1350, lines 12 to 16.

Tr. p. 1368, lines 15 to 18.

Tr. p. 1694, lines 8 to 14.

Tr. p. 1966, line 13 to p. 1966, line 5.

Tr. p. 1967, lines 6 to 22.

Tr. p. 1967, line 24 to p. 1968, line 4.

Tr. p. 1968, lines 13 to 21.

Tr. p. 1970, line 24 to p. 1971, line 2.

Tr. p. 2061, lines 14 to 19.

Tr. p. 2353, line 8 to p. 2354, line 6.

Tr. p. 2642, lines 5 to 11.

Tr. p. 2757, lines 8 to 15.

Tr. p. 2763, lines 7 to 15.

Tr. p. 2803, lines 1 to 8.

Tr. p. 2816, lines 7 to 14.

Tr. p. 2820, lines 2 to 18.

Tr. p. 2821, lines 2 to 9.

Tr. p. 2823, line 3 to p. 2824, line 2.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 232.

Exception No. 233.

Respondents, and each of them, hereby except to the hereinafter specified erroneous rulings of the Trial Examiner denying motions to strike made by respondents at the hearing in this proceeding. Respondents duly excepted to and do hereby except to each and all of said rulings. The motions to strike and rulings herein referred to and to which exception is taken appear in the following portions of the

transcript, which portions of the transcript respondents, and each of them, incorporate herein as though stated herein in full.

Tr. p. 91, line 6 to p. 93, line 14.

Tr. p. 148, line 20, to p. 149, line 12.

Tr. p. 156, line 10 to p. 157, line 14.

Tr. p. 219, lines 10 to 25.

Tr. p. 271, line 9 to p. 273, line 13.

Tr. p. 277, line 11 to p. 279, line 3.

Tr. p. 281, line 10 to p. 282, line 10.

Tr. p. 289, lines 2 to 20.

Tr. p. 290, line 21 to p. 292, line 12.

Tr. p. 526, line 13 to p. 527, line 21.

Tr. p. 528, line 15 to p. 530, line 9.

Tr. p. 533, lines 7 to 10.

Tr. p. 537, lines 15 to 25.

Tr. p. 541, lines 5 to 16.

Tr. p. 541, line 17 to p. 542, line 8.

Tr. p. 598, lines 2 to 12.

Tr. p. 613, lines 8 to 14.

Tr. p. 613, line 25 to p. 614, line 13.

Tr. p. 614, line 16 to p. 617, line 10.

Tr. p. 784, line 9 to p. 786, line 4.

Tr. p. 872, line 25 to p. 873, line 10.

Tr. p. 1038, lines 16 to 23.

Tr. p. 1090, line 21 to p. 1091, line 21.

Tr. p. 1116, lines 12 to 17.

Tr. p. 1162, line 24 to p. 1163, line 4.

Tr. p. 1210, line 21 to p. 1210, line 6.

Tr. p. 1312, line 12 to p. 1313, line 7.

Tr. p. 1316, line 15, to p. 1317, line 5.

Tr. p. 1318, line 24 to p. 1320, line 20.

Tr. p. 1322, line 24 to p. 1323, line 10.

Tr. p. 1324, line 17 to p. 1325, line 14.

Tr. p. 1357, lines 12 to 24.

Tr. p. 1449, lines 4 to 10.

Tr. p. 1940, lines 1 to 9.

Tr. p. 2002, line 3 to p. 2003, line 4.

Tr. p. 2041, line 14 to p. 2042, line 3.

Tr. p. 2255, line 12 to p. 2256, line 23.

Tr. p. 2293, line 21 to p. 2295, line 5.

Tr. p. 2889, lines 1 to 16.

Respondents, and each of them, hereby specify all the foregoing as Exception No. 233.

Exception No. 234.

Respondent Boswell Company hereby excepts to the undue delay in bringing this case to a hearing, and to the undue delay of the Trial Examiner in rendering his Intermediate Report following the hearing.

The record shows that the original charge setting forth the alleged unfair labor practices of said respondent was filed November 21, 1938 (Board's Exhibit No. 1-B). However, no complaint was issued until March 4, 1939, and no order was made setting the case for hearing until said date, on which date an order was made setting the case for hearing on March 13, 1939 (Board's Exhibit No. 1-G). After the case had been set for hearing, the matter was indefinitely continued by order of the acting Regional Director, Twenty-first Region, dated March 6, 1939, without any reasons given therefor (Board's Exhibit No. 1-J). Thereafter, the case was not set

for hearing until May 6, 1939, on which date an amended complaint was issued and an order was made by the Regional Director of the Twenty-first Region, setting the case for hearing on May 18, 1939 (Board's Exhibit No. 1-S). The record shows that the transcript was written up daily, and although upon conclusion of the hearing June 16, 1939, the reporter's official transcript had been completely written up, the Trial Examiner delayed rendering his Intermediate Report until January 1940, and it was not served upon said respondent until January 25, 1940.

The effect of this undue delay would be extremely prejudicial to the respondent in event the Board should render its decision in accordance with the erroneous recommendations of the Trial Examiner, wherein it is recommended that said respondent Boswell Company reinstate, with back pay, the following named men, to wit: James W. Gilmore, Boyd Ely, Walter Winslow, W. R. Johnston, Steven Griffen, Eugene Clark Ely, George J. Andrade, O. L. Farr, R. K. Martin, H. N. Wingo, E. C. Powell, L. A. Spear, and L. E. Ely (Intermediate Report, Recommendation 6 (b) and (c), page 94).

Respondent Boswell Company hereby specifies the foregoing as Exception No. 234.

Dated, March 11, 1940.

J. C. BOSWELL CO,
a corporation

By LOUIS T. ROBINSON

Assistant Secretary
CORCORAN TELEPHONE
EXCHANGE, a corporation

By C. H. GLENN

President and Manager
Associated Farmers of Kings
County, Inc.

By J. B. BOYETT

President
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By JOHN H. PAINTER

Attorneys for Respondent As-
sociated Farmers of Kings
County, Inc.

